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A DISSERTATION

ON THE

ASSEMBLIES

OF

THE ATHENIANS.

IN THREE BOOKS.

TRANSLATED FROM THE LATIN OF G. F. SCHÖMANN.

TO WHICH IS ADDED,

A NEW AND COMPLETE INDEX.

CAMBRIDGE:

PUBLISHED BY W. P. GRANT.

M DCCC XXXVIII.

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ADVERTISEMENT.

The learned treatise of G. F. Schömann, *De Comitiis Atheniensium,* (which appeared in 1819,) has long been so extensively known, and its value so universally appreciated, that it would now seem to require neither comment upon its utility, nor apology for its republication. Omitting, therefore, as superfluous, all discussion upon its intrinsic merit, it will only remain to offer a few words on the new form in which it is here presented to the public.

Celebrated as the work has now become, yet the circumstance of its being written in a language with which comparatively few are so conversant as to be able to peruse it with fluency and ease, has, without doubt, materially retarded its circulation in this country at least, and still is an obstacle to that general adoption in our public schools, which its value so unquestionably merits. Satisfied of this fact, the Translator has ventured to hope, that an *English edition,* of respectable appearance and moderate price, may prove more acceptable to some, than the singularly uninviting volume in which the learned German has thought fit to publish the result of his researches to the world. At the same time, however, the Translator is fully aware, that many will yet be found to prefer the very elegant and perspicuous style

of the original, to the translation which is now offered as its substitute. But to these he must with deference object, that he has found, from actual experience in tuition, that considerable reluctance is manifested by those who are not advanced scholars (and to whom the work of Schömann is by no means on that account the less valuable) in perusing the pages in Latin; and that, in fact, many are deterred by the perhaps imaginary difficulty of at once arriving at the Author's meaning. For such, then, this translation has been chiefly undertaken, in full confidence that the general value of the work will be enhanced in the same proportion as its language is rendered more accessible and familiar to all classes of students. It is anticipated, in short, that a translation will not only *facilitate* but *encourage* perusal.

In one respect, at least, the Translator flatters himself that the present edition will have an advantage over the former. The Index to the original work is so deficient, that much of its value as a book of reference is in consequence lost. This has been compiled *entirely anew*, and will now be found to comprise the minutest words which are treated of or explained in the body of the work.

The dedicatory address, of eight pages, to Augustus Boeckh, it has been deemed unnecessary to insert.

F. A. P.

Cambridge, May 10, 1838.

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CONTENTS.

BOOK I.

	Page
Introduction	1
Chap. I.—On the different kinds of Assemblies ..	25
Chap. II.—On the particular days of holding Assemblies	30
Chap. III.—On the places of holding Assemblies ..	47
Chap. IV.—By whose authority, and in what manner, the people were convened	53
Chap. V.—On the Pay given for Attendance at the Assemblies	59
Chap. VI.—Who had the right of Voting ..	65
Chap. VII.—On the duties of the Prytanes and Proedri at the Assemblies	75
Chap. VIII.—On the ceremonies performed previously to holding an Assembly ..	97
Chap. IX.—On the *προβουλεύματα*, or Decrees of the Senate	101
Chap. X.—On the Orators	108
Chap. XI.—On Voting	120
Chap. XII.—On the *ψηφίσματα*, or Decrees of the people	130
Chap. XIII.—On the dismissal of the Assemblies ..	146

BOOK II.

Page

CHAP. I.—On the various subjects discussed in Assemblies 153

CHAP. II.—On the Action for unconstitutional Measures (γραφὴ παρανόμων) 157

CHAP. III.—On Εἰσαγγελία 167

CHAP. IV.—On Extraordinary Public Trials; and on Informations (μηνύσεις) 210

CHAP. V.—On προβολή, or Complaint to the people 220

CHAP. VI.—On Ostracism 234

CHAP. VII.—On Enacting and Abrogating Laws .. 239

CHAP. VIII.—On War, Peace, Confederacies, and Commerce 268

CHAP. IX.—On the Revenues, and their disposal, as far as vested in the Assemblies 273

CHAP. X.—On the Sacred Rites and Religion .. 283

CHAP. XI.—On the Magistracies, Administrations (ἐπιμελείαι), and Services 292

CHAP. XII.—On other matters pertaining to the people in Assembly 313

BOOK III.

CHAP. I.—On the Division of Attica into Phyles and Demes 323

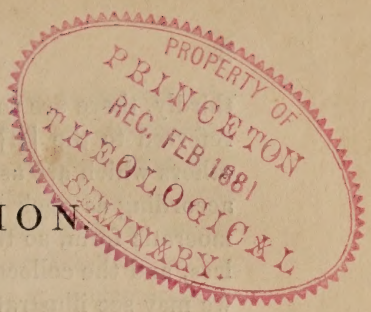
CHAP. II.—On the Assemblies of the Phyles .. 346

CHAP. III.—On the Assemblies of the Demes .. 353

In Page 214, line 4, *for* "a certain victor at the Pythian games," *read* "one Pythonicus."

ERRATA.

PAGE.	LINE.	ERROR.	CORRECTION.
51	14	*for* temple	*read* theatre.
55	21	κατεκκλησίαι	κατακλησίαι.
63	24	suppositious	supposititious.
112	28	Lexicon	the Lexicon.
120	note 3, l. 4,	life	lives.
140	18	προεδεύειν	προεδρεύειν.
197	note	life	lives. [ballot.
212	12	voted	voting *and dele* by
213	9	Agoracritus	Agoratus.
227	17	temple	theatre.
242	6	'επιχειρονία νόμον	'επιχειροτονία νόμων.
295	note 5, l. 7,	Plutarch	Theseus.



INTRODUCTION.

EVERY government consists of three portions; the deliberative, the magisterial, and the judicial: and according to the different condition and character of these, the government they constitute will also differ[1]. No element, however, is more essential to the existence of a state, than the deliberative body above alluded to. Not only has it the power of discussing and deciding upon matters of the greatest importance to the state, as upon war and peace, upon confederacies and treaties, and things of a similar nature; but also of enacting laws, the enforcement of which rests with the magistrate, the interpretation with the judge, and the obligation with the people. Further: to this body belongs the appointment, if not of all, at least of some of the magistrates; it can occasionally even exercise judgement in cases which most nearly affect the interest of the state; as well as pronounce sentence of death, banishment, or confiscation of property.

In all these matters the chief power is in a free state vested either in the hands of the whole people, or of a part of them, as the rich and noble. In the former case it is called a democracy; in the latter, an aristocracy. But a popular government has itself several forms. For a voice in public affairs is either extended to the whole body, not collectively in one common assembly, but in turn and in classes; *κατὰ μέρος ἀλλὰ μὴ πᾶσιν ἀθρόοις*; or it is confined to colleges of magistrates; to which however access is open for all, under certain regulations: or,

[1] Cf. Aristot. Polit. iv. 14.

thirdly, there are some kinds of public business which are referred to the [II] assemblies of the whole people, and others which are assigned to individual magistrates. But, according as each state more nearly approaches the democratic form, so the authority of the magistrates will be less, and the collective power of the people greater. This we may see illustrated in the case of Athens; where the popular dominion, which grew gradually from monarchy and aristocracy, in process of time advanced to such a pitch, that all the authority of the chief men, and all distinction of rank, were abolished; and that uncontrolled dominion of the people, more resembling tyranny than liberty, in the end brought on by its violence and imperfections its own ruin, and compelled the state, involved in one common destruction, to bear the yoke which its enemies imposed.

The form of government at Athens, as in all the other Grecian states, was originally monarchical; the nature of which we chiefly learn from the poems of Homer. For as in those early times there was a greater equality in customs and habits of private life among all the Greeks; so there appears to have been less diversity in their public affairs and institutions. The power of the kings was however nowhere supreme; it was checked and counteracted by that of the people. For there are several kinds of monarchy: in some the power is limited to the perpetual command of the armies, and to the superintendance of certain sacred ceremonies. In others, the king has supreme control over all, held however by right, with the consent of the people, and by hereditary succession. Others again are invested with authority, supreme indeed, but temporary; such as were the [III] *αἰσυμνῆται*[2] of the earlier Greeks. Lastly, there are some, like the kings of the heroic ages described by Homer, who act as commanders abroad, but at home as judges and supreme arbiters of all public affairs[3].

[2] Vid. Dionys. Halicarn. v. c. 73; cf. Albert. ad Hesych. s. v. tom. i. p. 175.
[3] Cf. Aristot. Polit. iii. c. 14.

These kings then, when any thing was to be done by the consent and influence of the collective body of citizens, used to convene an assembly, *ἀγορὰν*, in which they laid before the people what they wished to have done, or what concessions to have made to themselves: and the people appear almost invariably to have acquiesced in their authority, and testified their ready obedience by acclamation[4].

But even in these times the difference between the various ranks of society was clearly defined. We find in Homer an evident distinction made between the princes and nobles, and the plebeians. The former, conspicuous for their deeds of valour, their wealth, and their splendid armour, often powerful through their connection by birth or marriage with royal families, or renowned for their fabulous descent from the gods, are termed *αἵματος ἀγαθοῖο, ἔξοχοι ἄνδρες, ἥρωες*[5]. Having great weight also in the affairs of state, and being second only in authority to the kings, they are sometimes themselves called *βασιλῆες, ἡγήτορες ἠδὲ μέδοντες*[6]. To gain the good will of such powerful chiefs was naturally an important object with the kings; who with a view to this end, used to admit to a share of their counsels the eldest and most illustrious among them. Afterwards, if it was deemed necessary, the result of their consultations was laid before the people in assembly[7].

But even there the plebeians had little or no authority, as is clear from the fact that none except the *ἥρωες*[8] or the *ἡγήτορες ἠδὲ μέδοντες* are called upon, nor does any one of the [iv] plebeians ever rise to address the assembly. And these *δήμου ἄνδρες* are designated by Ulysses as *οὔτ' ἐν πολέμῳ ἐναρίθμιοι οὔτ' ἐνὶ βουλῇ*[9].

Those whom Homer calls *heroes*, were among the Athenians called Eupatridæ, that is, patrician, or well

[4] Hom. Il. ii. 143. 334. 395; Odyss. iii. 150.
[5] Odyss. iv. 611; Il. ii. 188; Od. iv. 268; cf. Od. xviii. 125, seqq.
[6] Od. i. 394; viii. 390; xviii. 63.
[7] Iliad. ii. 53; x. 414; cf. Feith. Antiq. Hom. lib. ii. cap. 6.
[8] Od. viii. 26; Il. ii. 110; Od. ii. 15. 157.
[9] Il. ii. 202.

born. In the earliest times the people were divided into three orders, εὐπατρίδαι, γεωμόροι, δημιουργοί[1]. It is a supposition both reasonable and supported by ancient testimony, that the eupatridæ were those who were either related to the royal family, or were conspicuous for the antiquity or splendour of their descent. They are described by the ancient writers as μετέχοντας βασιλικοῦ γένους, or τοὺς ἐκ τῶν ἐπιφανῶν οἴκων καὶ χρήμασι δυνατούς. To these exclusively was entrusted the management of civil and religious affairs, the office of magistrate and judge, and the enforcement of the laws[2]. For the γεωμόροι, or land holders, called by some γεωργοὶ, ἀγροιῶται, or ἀγροῖκοι, were too much occupied with the cultivation of the soil to have any time for attending to public affairs[3]: while the working classes, δημιουργοὶ, (not artisans, whose number was in early times but small, and their condition respectable, but hired workmen) were employed, almost as slaves, [v] in the service of the rich. This last order are called by Homer and Hesiod θῆτες, and are ranked with the slaves. Dionysius compares them with the Penestæ[4] of the Thessalians, by which comparison he would seem to infer that the generality of them were in a condition intermediate between liberty and slavery, and were attached as vassals to the service of the rich. The author of this arrangement is said to have been Theseus, who, having united all the inhabitants of Attica by the bond of one commonwealth, is reported to have established, and furnished with many excellent laws

[1] Julius Pollux, viii. 111. These should not be called *classes*, (as they are by Petit, Legg. Att. ii. 3. p. 201). The word *classes* was applied by the Romans to fortune, *ordines* to birth, as patricians and plebeians. The eupatridæ are therefore more properly *orders*. The *classes* were afterwards instituted by Solon, and had reference only to *fortune*.

[2] Plutarch, Thes. c. 25; Dionys. Halicarn. ii. c. 8.

[3] In later times the γεωμόροι were in some states among the richest of the citizens, and were leading men in the government, as at Samos and Syracuse. Vid. Thucyd. viii. 21; and Duker in loc.; Herod. v. 77; vi. 22; and Valckenaer on the latter passage.

[4] Hom. Od. iv. 644; Hesiod. Op. et D. v. 563; Brunck. Dionys. ii. c. 9; see also Ruhnken on Timæus, p. 212, seqq.

and institutions, the state which he had as it were founded anew. Before his time, the Athenians lived dispersedly in twelve towns, (whose names are given by Strabo[5],) each of which was an independent republic, and governed by the absolute control of its own prince: nor did they ever assemble to join the king at Athens, except when any great and extraordinary emergency seemed to call for the united energies and counsels of the whole collective mass[6]. Theseus combined these small and disunited states into one large one, and thus made Athens alone the seat of sovereignty, and of the judicial and magisterial jurisdiction. Thus the inhabitants of the rest of Attica became, and were considered, citizens not only of the states to which they respectively belonged, but of this one large community, which was called by way of pre-eminence, ΑΣΤΥ. Hence we see why the Attic writers so frequently use the term ἀστὸς for πολίτης: viz. because none could enjoy their full rights of the city unless actually resident therein. Hence also we learn, why the eupatridæ are called by the etymologist, οἱ αὐτὸ τὸ ἄστυ οἰκοῦντες: not implying that all necessarily dwelt constantly in the city, but that they could not exercise the privilege of their rank [VI] unless they did so; which is the reason why they spent so much of their time in the city and not in the country; whilst the other orders, engaged in their various occupations, generally dwelt in the latter, and did not trouble themselves much with going up to the city to take any part in politics. Little attention is to be paid to those writers, who have such magnified views of Theseus' love of the people, as to relate that he was the author of the democracy; and go so far as to adduce, in support of this, the testimony of Homer, by whom the Athenians alone are called δῆμος in the catalogue of ships[7]. But these and similar historical chimæras must be attributed to the fondness which poets have of

[5] Strab. ix. p. 387.
[6] Thucyd. ii. c. 15; Plutarch. Thes. c. 24.
[7] Plutarch. Thes. c. 25. c. 3.

deducing a sort of sketch or outline of their own times, and the origin of all those institutions which are considered as good, from the remotest antiquity, and from some one renowned hero, that both the institutions themselves may derive respect from their age, and their author appear the more conspicuous for wisdom and virtue [8]. Every one, I imagine, must have satisfied himself how little historians generally apply the true and safe rules of criticism to the subject of antiquity. The chief object of Plutarch is, not to [VII] sift truth out of fables, but to dress up fables with an appearance of truth, and relate the exploits of Theseus and Romulus with as much gravity as those of Pericles or Cicero.

This state of affairs continued at Athens even after the voluntary death of its king Codrus, whose patriotism the Athenians commemorated by a decree that no one for the future should reign over them with the title of king. After this the reins of government were held by single archons, of the family of Codrus alone, and retained by them for life, in hereditary succession. After a lapse of three hundred and sixteen years, the authority of the archons was limited for ever to a duration of ten years, though the office was still confined exclusively to the same family. Subsequently, however, on account of the tyrannical conduct of Hippomenes, the privilege was taken

[8] It will be sufficient to take Euripides alone in illustration of this. That poet makes Theseus say, Suppl. 353;

καὶ γὰρ κατέστησ' αὐτὸν (τὸν δῆμον) εἰς μοναρχίαν,
ἐλευθερώσας τήνδ' ἰσόψηφον πόλιν.
v. 405. οὐ γὰρ ἄρχεται
ἑνὸς πρὸς ἄνδρος, ἀλλ' ἐλευθέρα πόλις.
δῆμος δ' ἀνάσσει διαδοχαῖσιν ἐν μέρει
ἐνιαυσίαισιν, οὐχὶ τῷ πλούτῳ δίδους
τὸ πλεῖστον, ἀλλὰ χὠ πένης ἔχων ἴσον.
v. 440. τοὐλεύθερον δ' ἐκεῖνο, τίς θέλει πόλει
χρηστόν τι βούλευμ' εἰς μέσον φέρειν ἔχων;
καὶ ταῦθ' ὁ χρῄζων λαμπρὸς ἔσθ', ὁ μὴ θέλων
σιγᾷ· τί τούτων ἐστ' ἰσαίτερον πόλει;

Nor could Pericles or Cimon have spoken differently. See the opinion of Pausanias on these fables, Attic. cap. 3. §. 2.

from that family and transferred to the rest of the eupatridæ[9].

The archons were invested with little short of kingly power[1], but were liable to give an account of their conduct to the people[2]. In what manner however they did this, we are ignorant, as well as how they were elected after the office of archon ceased to be hereditary. But it seems tolerably certain, that the patricians alone, and not the whole people, had a right to vote at their election.

The last change which was introduced, was in Ol. xxiv. 4, when nine archons were elected annually from the patricians[3]. Thus by limiting the period of that office, and increasing the number of those who held it, the power of the archons was diminished, [VIII] and more equally distributed among the patricians; for more could now hold it. Yet the condition of the people was not ameliorated. They had no public rights of their own, and the power of the magistrates was oppressive; for, as the written laws were then very defective and inefficient, they exercised their authority both as judges and directors of public affairs arbitrarily, or at the discretion of those patricians whose counsels they made use of in the discharge of their duties. In addition to this, many of the plebeians were deeply in debt, and being in the power of their patrician creditors, were reduced to the most wretched state of slavery[4].

As in after times, when the unrestrained licence of the patricians at Rome became so oppressive to the people, that all were eager in demanding a table of written laws; so at Athens the same cause gave rise to a sedition, to quell which Draco was commissioned to draw up a defi-

[9] Vid. Suid. in v. Ἱππομένης, and παρ' ἵππον καὶ κόρην. Taylor ad Æschin. in Timarch. p. 176; Heraclid. Pontic. 1.

[1] Hence they are said βασιλεύειν. Vid. Perizon. ad Ælian. Var. Hist. v. 13.

[2] Pausan. Messen. c. 5. §. 4; τοὺς Μεδοντίδας ἀφείλοντο τῆς ἐξουσίας τὸ πολὺ, καὶ ἀντὶ βασιλείας μετέστησαν εἰς ἀρχὴν ὑπεύθυνον. That the Medontidæ are the same as the Codridæ, is well known.

[3] Ἄρχοντες ἐνιαυσιαῖοι ἠρέθησαν ἐξ εὐπατριδῶν. Euseb. Chron. p. 155.

[4] Plutarch, Solon, c. 13.

nite code; which, however, proved insufficient to quench the turbulent spirit of the people, as it comprised only questions of private, and not (what was infinitely more wanted) public law[5]; and was besides odious for its sanguinary severity.

The violence of the patricians becoming daily more intolerable, and the indignation and resentment of the people proportionably more vehement; a party of ambitious citizens, headed by Cylon, seized the occasion of the general disaffection to accomplish the bold design of possessing themselves of the sovereignty: but as the project was undertaken with more zeal than caution, it was soon quelled by the assistance of the rest of the patricians, among whom the Alcmæonidæ took a conspicuous part. This interference, however, engendered more odium than gratitude in the people; and we find that family soon afterwards condemned and banished the country[6], as much perhaps through this feeling of dislike against them, [IX] as on the grounds of religion. Upon this the sedition assumed a more serious aspect, and the whole state was divided into three factions. The poor and reduced commonalty, whose condition was most wretched, exasperated by their hatred of the powerful, and stung with the sense of their own injuries, demanded that all the authority of the patricians should be abolished, and an equal distribution of rights extended to all classes. As most of these inhabited the mountainous district from Brauron to Parnes, they were denominated Diacrii. Opposed to them were the rich, who favoured oligarchy; and these were called Pediæi, from their dwelling chiefly in the level country between Eleusis and Oropus. The Parhalii, or inhabitants of the sea-coast, embraced views intermediate between the two.

[5] Aristot. Polit. ii. c. 12. *Δράκοντος δὲ νόμοι μὲν εἰσὶ, πολιτείᾳ δ' ὑπαρχούσῃ τοὺς νόμους ἔθηκεν. ἴδιον δ' ἐν τοῖς νόμοις οὐδέν ἐστιν, ὅτι καὶ ωνείας ἄξιον, πλὴν ἡ χαλεπότης, διὰ τὸ τῆς ζημίας μέγεθος.* Cf. Plutarch. Sol. c. 17; Suid. in v.; Aul. Gel. N. A. xi. c. 18.

[6] Herod. v. cap. 71; Thucyd. i. cap. 126; Plutarch. Solon. cap. 12.

When these factions had long embroiled the state, without coming to any result, and matters had at last arrived at such a pitch that many of the plebeians began to talk of a general remission of debts, agrarian laws, and the entire subversion of the state; and when they were now only waiting for a leader to assist them in recovering their liberty by open violence, Solon was at last, by the unanimous consent of all good men, invested with supreme power, and commissioned to draw up a new code of laws[7].

Solon, then, being appointed archon, immediately perceived that the chief cause of discontent in the people was the extent of their debts. He therefore thought it best to consult the advantage of those who were in the power of their creditors, by a total remission of all debts, as most writers seem to think; but as others assert, by diminishing the rate of interest, and raising the value of money. To prevent all causes of future sedition, he removed the odious power of the patricians, maintained the liberty of the people, and equalized as far as possible the rights of all. [x] First, to avoid levelling all distinction, and creating universal confusion, he appointed four classes; in the first of which he included all who had from their estates not less than five hundred medimni annually; in the second, all who had three hundred; in the third, all who had two hundred[8]; and in the fourth, all who fell short of this income. The names of these classes were respectively πεντακοσιομέδιμνοι, ἱππεῖς, ζευγῖται, and θῆτες[9]. That the poor might not be entirely excluded by the rich from holding farms, and the whole land become the property of a few, he laid down a certain limit to its possession which no one was allowed to exceed[1]. The

[7] Plutarch. Solon. c. 13 and 29; cf. Meurs. Sol. c. 10; Pisistrat. c. 3.

[8] Thus Pollux, viii. 130; Plutarch. Solon, c. 18. But Aristotle, Polit. ii. 12, places the ζευγῖται in the second, and the ἱππεῖς in the third class: whence Heraldus (Animadv. in Salmas. iii. 15. p. 15,) infers, what may be presumed from other reasons, that in his age the whole thing was abolished. See more on this subject in Meurs. Solon. c. 14.

[9] Concerning the name ζευγῖται, see Corsin. Fast. Att. P. iii. p. 77.

[1] Aristot. Polit. ii. 7: ὅτι μὲν οὖν ἔχει τινα δύναμιν εἰς τὴν πολιτικὴν

judicature, which had been hitherto exclusively in the hands of the patricians, Solon laid open to all, by a decree that persons should be chosen by lot out of the whole state to sit in the courts as judges, and that no one should be disqualified by his poverty. This measure, in appearance of no great importance, was afterwards found to have considerable weight[2]. For by it [xi] the lowest joined equally with the highest in the administration of a most important department of the state; since the courts had the power of deciding on every point, the decrees of the senate and people, and the conduct of both private and public individuals[3].

In the time of Solon, however, and that immediately succeeding him, there was not much danger that the management of so many important affairs would ever devolve upon the fickle and ignorant mob, composed of the poorer citizens. For at that time they had no pay for attending at court; a circumstance which alone was likely to deter the working mechanics from injuring themselves and their families by meddling with public affairs which offered them no compensation. Hence they seldom gave in their names to be ballotted for, but relinquished the whole of this department to the rich.

Solon's next measure was to institute assemblies (*ἐκκλησίας*) of the whole body of the people, to whose decision were committed those public affairs which did not come under the jurisdiction of the magistrates, viz. the election of the magistrates themselves, and, in fine, the management of the whole government: but as I shall treat fully in the following books of this subject, I need not add more in this place. Over these assemblies Solon

κοινωνίαν ἡ τῆς οὐσίας ὁμαλότης, καὶ τῶν πάλαι τινὲς φαίνονται διεγνωκότες, οἷον καὶ Σόλων ἐνομοθέτησε, καὶ παρ' ἄλλοις ἐστὶ νόμος, ὃς κωλύει κτᾶσθαι γῆν ὁπόσην ἂν βούληταί τις. I have quoted the entire passage of Aristotle, because this institution of Solon's is mentioned, as far as I know, by him alone, and is omitted by Meursius and the rest.

[2] Plutarch. Solon, c. 18; Aristot. Pol. ii. 12.

[3] See book ii. of this work, on *γραφὴ παρανόμων* and *εἰσαγγελία*, ch. 2 and 3.

made the senate supreme; nor could any measure be proposed to the people, or any decree passed, without the permission and approbation of the senators. This body was composed of four hundred citizens, one hundred being appointed annually from each of the tribes, which were then four in number. They were elected by lot from the three first classes, and were required to be not less than thirty years of age: but previously to entering upon their year of office, they underwent a public scrutiny, in which they were bound to shew themselves not unworthy of that post[4]. [XII] In default of express testimony, we can only conjecture of what nature the senate was before Solon's time; or rather, what body of men constituted the public council. It is clear from the case itself, that, whatever it was, it could not have resembled the senate of Solon, nor have been composed of citizens of all rank, without any distinction but that of fortune, appointed annually by lot; for such a senate is clearly characteristic of a democracy[5], and not of an aristocracy, which prevailed at Athens before Solon's time.

Perhaps, however, the presidents or prefects of the divisions into which the people were anciently separated, performed also the office of senators. At all events Aristotle tells us, that among the Epidamnians, in place of the prefects of the tribes (*φύλαρχοι*) a senate was afterwards instituted[6]. Herodotus also intimates, that in the time of Cylon the presidents of the Naucrariæ had the chief management of affairs at Athens[7]; whence we may

[4] From Sigon. de Rep. Ath. ii. c. 3. Petit. Legg. Att. iii. 1. and other writers this subject is well known. In this scrutiny (*δοκιμασίᾳ*), any one might accuse an unworthy candidate; an example of which we have in Lysias's oration *in Philon.* p. 186. and one of a defence in the oration *pro Mantitheo*, p. 145. ed. Steph.

[5] See Aristot. Polit. iv. 15. Βουλὴ δημοτικόν. cf. vi. 2. δημοτικώτατον Βουλή. et ib. 8. cf. Heeren. Ideen. iii. 1. p. 253.

[6] Aristot. Polit. v. 1. Καὶ ἐν Ἐπιδάμνῳ δὲ μετέβαλεν ἡ πολιτεία κατὰ μόριον· ἀντὶ γὰρ τῶν φυλάρχων βουλὴν ἐποίησαν.

[7] Herod. v. 71. Οἱ πρυτάνις τῶν Ναυκράρων, οἵπερ ἔνεμον τότε τὰς Ἀθήνας. There were forty-eight Naucrariæ, twelve out of each tribe. See inf. lib. iii cap. 1.

fairly conjecture that they consulted and determined on public matters. Nothing certain, however, can be asserted on a subject so obscure.

[XIII] All citizens, except those of the last class, might hold the office of magistrate, with this limitation, that the dignity of Archon, and a few other posts of peculiar trust and importance, were reserved for the Pentacosiomedimni [8].

The power of the Archons Solon diminished. Before his time nearly the whole administration of the state [9], and the arbitrary decision of all causes and disputes, was held by them. Solon, however, so far divested them of this extravagant authority, that, with the exception of the management of certain sacred rites, he left them nothing but the privilege of referring causes to the judges, after a previous investigation by themselves, and of presiding in the courts [1].

Thus the commonwealth was so happily blended by Solon, that the authority of the aristocracy was not too much reduced, nor the plebeians so far improved in condition, as to have sufficient strength for creating commotions and seditions, though rendered safe from insults and slavery. By these means a sort of [XIV] medium

[8] Thus the *ταμίαι τῆς θεοῦ* were Pentacosiomedimni. Pollux viii. 97. On the Archons see Perizon. ad Ælian. Var. Hist. viii. 10.

[9] Thucyd. i. 126. *Τότε τὰ πολλὰ τῶν πολιτικῶν οἱ ἐννέα ἄρχοντες ἔπρασσον.* These words are taken from the passage where he relates the story of Cylon, with a little variation from the account given by Herodotus. The latter attributes to the Prytanes of the Naucrari what the former ascribes to the nine Archons. This has led Harpocration (in v. *Ναυκραρικὰ*) and Suidas (tom. ii. p. 599. Kust.) into the belief that the Archons were at that time called Prytanes of the Naucrari. But it is not credible that, if that name were really ever given to the Archons, it should have been so completely lost as to have been nowhere distinctly mentioned; nor is it necessary to have recourse to such a conjecture to reconcile Thucydides with Herodotus. The Naucrari and their chiefs, the Prytanes, may have been commissioned to take Cylon, and yet have acted under the directions and commands of the Archons.

[1] Vid. Perizon. ad Ælian. Var. Hist. v. 13. All the duties of the Archons are enumerated by Pollux, viii. 86—91.; but it is unnecessary to recount them here.

between aristocracy and democracy was effected, which Solon himself thus speaks of[2]:

Δήμῳ μὲν γὰρ ἔδωκα τόσον κράτος, ὅσσον ἐπαρκεῖ,
Τιμῆς οὔτ' ἀφελὼν, οὔτ' ἐπορεξάμενος.
Οἳ δ' εἶχον δύναμιν, καὶ χρήμασιν ἦσαν ἀγητοὶ,
Καὶ τοῖς ἐφρασάμην μηδὲν ἀεικὲς ἔχειν.
Ἕστην δ' ἀμφιβαλὼν κρατερὸν σάκος ἀμφοτέροισι·
Νικᾶν δ' οὐκ εἴασ' οὐδετέρους ἀδίκως.

Yet not even did this state of affairs give entire satisfaction to either party. The rich and powerful were jealous of the least infringement upon their rights, and the commonalty, elated with their recent liberty, were eager for the still further extension of their privileges. Hence, not many years after the Archonship of Solon, the former seditions were revived; and after much contention between those who wished for an oligarchy, and those who stood up in favour of a just equality of rights, Pisistratus placed himself at the head of a third faction, composed of the poorest classes; and having got the better of his adversaries, and craftily deceived the people, he assumed the sovereign power, which, after it had been lost and recovered more than once, he bequeathed to his sons. Thus for thirty-six years the Athenians were under the sway of Pisistratus and his sons; who, although they retained in force most of Solon's laws, and reigned with considerable moderation, yet ensured to themselves all the regal dignity, and the administration of the state, which they had snatched from the hands of the people. On this account neither regular assemblies seem to have been convened, nor all classes without distinction admitted to sit as judges on public causes, as Solon had appointed. Yet no writer gives an express account of the arrangements of the Pisistratidæ in these particulars, though we read, in some authors, that Pisistratus compelled the citizens as far as possible to reside in the

[2] Plutarch. Sol. c. 18. Cf. Aristot. Polit. ii. 12.

country, [xv] lest by leading an idle life in the city they should be induced to agitate schemes for the recovery of their liberty [3].

No sooner, however, had the tyrants been expelled, and liberty regained, than the parties of two ambitious citizens, Isagoras and Clisthenes, the chief of the Alcmæonidæ, began to raise commotions. Clisthenes, aware that his party was no match for that of his opponent, professed himself on the side of the people, by whose assistance, after various contests, he compelled Isagoras to quit Attica. Many writers celebrate this man as having restored and perfected the constitution which Solon appointed [4]. But he diminished the influence of the Patricians' wealth, by admitting into the state strangers and a multitude of slaves [5], and by altering the former distribution of the people into four tribes. These he now increased to ten, each consisting of as many demi, in order that the people, mixed up with others who were strangers to them, and the Patricians with those who had been lately enrolled as citizens, might have less weight and less connection with the rest, by the dissolution of the bonds of their intimacy [xvi] and relationship [6]. He also enlarged the number of the senate, fifty being now elected

[3] See the authors of the complete history of Pisistratus and his sons in Meurs. Pisistr., of which work chapters 3—7. chiefly belong to this place. Other tyrants pursued this plan of keeping the citizens away from the city, as Periander of Corinth; v. Perizon. ad Ælian. ix. 25. and the thirty at Athens. v. Xenoph. Hellen. ii. 4. 1.

[4] Isocrat. Areopag. p. 338. ed. Wolf. 1571. Id. de Bigis, p. 838. Herod. vi. 131. Plutarch. Aristid. c. 2.

[5] Aristot. Polit. iii. c. 2. Κλεισθένης—πολλοὺς ἐφυλέτευσε ξένους καὶ δούλους καὶ μετοίκους. Thus read for δούλους μετοίκους, with Wolf. prol. ad Demosth. Leptin. p. lxix. For μέτοικοι cannot be called δοῦλοι, unless we understand it to mean freedmen; a sense which is not usual, though given to the word by Chrysippus, in Athenæus, vi. c. 93. p. 267. b.

[6] Aristot. Polit. vi. c. 4. See *infra*, lib. iii. for more information on this subject. The names and order of the tribes are as follows: Ἐρεχθηΐς, Αἰγηΐς, Πανδιονίς, Λεοντίς, Ἀκαμαντίς, Οἰνηΐς, Κεκροπίς, Ἱπποθοωντίς, Αἰαντίς, Ἀντιοχίς. Vid. Corsin. F. A. Diss. iii. n. 6. and iv. n. 2. seqq. Biagi, de Decret. Ath. xii. 3.

by lot from each tribe, so as to make in all five hundred. Each of these companies of fifty acted as presidents of both the senate and the assemblies, for a tenth part of the year, under the name of Prytanes: and each of these tenth parts, of thirty-five or thirty-six days, so as to complete a lunar year, was called a Prytany[7]. The parties of fifty senators representing each tribe presided not in any regular succession, but by lot; nor were the fifty in office engaged all at once in active duty, but were subdivided into five bodies of ten each, their Prytany being correspondingly subdivided into five periods of seven days each: so that ten senators presided for one week over the rest, and were thence called *Πρόεδροι*. Again: out of the ten Proedri one Chairman (*Ἐπιστάτης*) was appointed every day of the seven to preside in the senate, and for that day held the keys of the citadel and treasury. The duty of these Proedri and their Chairman was to propose the subjects to be discussed both in the senate and the assembly, and after a sufficient deliberation to take the votes upon the question. To these, too, were attached from the nine non-presiding tribes, nine other Proedri, chosen by lot by the Chairman, and possessing a Chairman of their own[8]. The duty of these secondary Proedri was to see that [xvii] the consultation was carried on in an orderly and regular manner. But we shall treat more at large on this subject, and adduce proofs of each individual point, in the first book.

The power of the people was much increased after the second Persian war; the reason of which it is easy to see. In the first place, the very nature of the war, which was chiefly carried on by sea, introduced a great change in military service. The result of a battle, and consequently

[7] See the second argument to Demosthenes adv. Androt. p. 590. and Suidas in v. *πρυτανεία*. The assertion of the lexicographer that the four first Prytanies contained thirty-six, and the rest thirty-five, days (cf. Corsin. F. A. Diss. iii. n. 28.), is as false as that of the author of the argument, about *ἄναρχοι ἡμέραι* and *ἀρχαιρεσίαι*. See lib. ii.

[8] Harpocrat. in v. *ἐπιστάτης*, and Vales. p. 72. Pollux, lib. viii. 96.

the safety of the state, lay now more in marines and rowers, a class of sailors taken mostly from the lowest of the people, than in heavy armed soldiers for land service, on whom the state had before placed all its reliance. Hence it naturally followed, that the power[9] should extend to the poorer from the richer classes, who before entirely composed the heavy-armed soldiery. For a man always claims at home and in peace the same proportion of authority as he has influence in time of war. In addition to this, almost every part of Attica had been ravaged by the Persian army; so that those who had been the flourishing possessors of large tracts of land, were now reduced to poverty[1]: while the poor, who had had little or no landed property, were enriched with the spoils of war; and the people in general, flushed with their late victory, and confident in their strength, loudly demanded a greater share in the affairs of state. [XVIII] Aristides, therefore, shortly after the victory at Salamis, having been hitherto a warm defender of the aristocracy, now thought it necessary to yield to the times, and introduced a law, that every citizen, without distinction of classes, should be qualified to hold the highest honours[2]. But now, when the empire of the sea had been gained by the conduct of Aristides and Cimon, and the treasury enriched by the tribute of the subject states, some ambi-

[9] Many of the ancients assign the reason of this increase of power in the people. Isocrates alone will be sufficient to refer to: Panathen. p. 608. ἤδεσαν (οἱ πρόγονοι) τὴν κατὰ θάλατταν δύναμιν αὐξανομένην ἐκ τῶν τεχνῶν τῶν περὶ τὰς ναῦς καὶ τῶν ἐλαύνειν αὐτὰς δυναμένων, καὶ τῶν τὰ σφέτερα μὲν αὐτῶν ἀπολωλεκότων, ἐκ δὲ τῶν ἀλλοτρίων πορίζεσθαι τὸν βίον εἰθισμένων· ὧν εἰσπεσόντων εἰς τὴν πόλιν, οὐκ ἄδηλος ἦν ὁ κόσμος ὁ τῆς πρότερον ὑπαρχούσης πολιτείας λυθησόμενος. Cf. Plutarch. Themistocl. c. 19. Xenoph. de Rep. Ath. i. §. 2. Aristot. Polit. v. 4.

[1] See Plutarch. Aristid. c. 13.

[2] Plutarch. Aristid. c. 22. Cf. Petit. Legg. Att. ii. 3. p. 203. After this time, the ancient distinction of classes, which was regulated by the amount of the income, seems to have been gradually abolished. And yet a certain fortune seems to have been requisite for those who aspired to the office of Archon, as appears from the ἀνάκρισις they underwent, in which the question was asked, εἰ τὸ τίμημα αὐτοῖς ἐστίν; Pollux viii. 86.

tious men began to introduce that most pernicious practice of giving largesses. Pericles, who studied to increase the power of the people as the instrument of his own aggrandisement, first appointed a certain fee (*τὸ δικαστικόν*[3]) to be given to the judges for trying causes in the courts; and after his example Agyrrhius of Collytus awarded a sum of money (*τὸ ἐκκλησιαστικόν*[4]) to those who attended the assemblies. Before this, the poorest of the people, sufficiently occupied in earning a livelihood, took no active part in politics: but when such inducements presented themselves to their notice, they naturally preferred the easy gain offered by attending the courts or the assemblies, to severer labour; and, to use the joke of Aristophanes, supported themselves on the milk of the Colacretæ[5], without earning their bread by the sweat of their brow.

Thus, in every department of the state, as well as in the courts and the assemblies, [XIX] the people had weight:—the seditious thrived by the favour of the ignorant and misguided populace, and the good had no authority whatever. Thus the republic, wisely as it had been constituted by Solon, declined into an abominable democracy, conducted not by the laws, but by the headstrong will of the people[6]. A great accession also was made to the number of inhabitants, since, as the commerce by sea daily increased, a vast number of sailors, merchants, innkeepers, artisans, and others who lived by

[3] Aristot. Polit. ii. c. 12. Plut. Pericl. c. 9. Cf. Plato, Gorg. p. 515. and Heindorf. in loc.

[4] Vid. Vales. ad Harpocrat. p. 3. and ad Maussac. p. 209.

[5] Aristoph. Vesp. v. 724. *Κωλακρέτου γάλα πίνειν*, like the proverb, *ὀρνίθων γάλα* ["pigeon's milk"]. In the same play, v. 210, a person confesses that if he loses that pay he shall not know where to get a dinner.

[6] There are many passages of Aristotle which are worth comparing on this subject; as Polit. iv. c. 6. *κοινωνοῦσι καὶ πολιτεύονται πάντες, διὰ τὸ δύνασθαι σχολάζειν καὶ τοὺς ἀπόρους, λαμβάνοντας μισθόν. καὶ μάλιστα δὲ σχολάζει τὸ τοιοῦτον πλῆθος. οὐ γὰρ ἐμποδίζει αὐτοὺς οὐδὲν ἡ τῶν ἰδίων ἐπιμέλεια, τοὺς δὲ πλουσίους ἐμποδίζει. ὥστε πολλάκις οὐ κοινωνοῦσι τῆς ἐκκλησίας οὔτε τοῦ δικάζειν. διὸ γίγνεται τὸ τῶν ἀπόρων πλῆθος κύριον τῆς πολιτείας, ἀλλ' οὐχ οἱ νόμοι.* Cf. ib. c. 15. fin. and vi. c. 2.

haunting the ports and market-places, took up their abode at Athens. This description of persons, naturally fickle, seditious, and idle, and habitually most ready to attend the assemblies, is generally one of the chief causes of deterioration in a popular constitution[7].

Such, then, were the causes which so immensely increased the power of the people, and corrupted the most wholesome institutions. This result, too, was materially facilitated by the degradation of the august court of the Areopagus, which was effected either by Pericles, or, at his instigation, by Ephialtes. This court, which had hitherto been a curb to all seditious attempts and rash desire of innovation in the city, [xx] as well as the guardian of the laws and ancient discipline, was now deprived by these means of the greatest part of its authority[8]. Thus too much liberty was to Athens the main cause of the loss of her ancient constitution, her national glory, her empire, and ultimately of that very liberty itself. Various remedies were indeed occasionally resorted to, in order to check the growing evil, but all proved unsuccessful. The state was loth to have them tried, nor was there indeed any one who could apply them with sufficient skill: for after the disastrous termination of the expedition against Syracuse, undertaken, in the time of the Peloponnesian war, through an insatiate thirst of empire, and when the resources of the state were impaired by the length of the war and the defection of the allies; there were some who entertained the design of effecting a revolution. The aristocracy, drained by the incessant expenses of the liturgies, and harassed by the malicious accusations of the informers[9], while the commonalty en-

[7] Aristot. Polit. vi. c. 4. shewing the advantage of country people and husbandmen in a state: *τὰ δ' ἄλλα πλήθη πάντα σχεδὸν, ἐξ ὧν αἱ λοιπαὶ δημοκρατίαι συνεστᾶσι, πολλῷ φαυλότερα τούτων. ὁ γὰρ βίος φαῦλος, καὶ οὐθὲν ἔργον μέτ' ἀρετῆς, ὧν μεταχειρίζεται τὸ πλῆθος, τό τε τῶν βαναύσων καὶ τῶν ἀγοραίων ἀνθρώπων καὶ τὸ θητικόν. ἔτι δὲ διὰ τὸ περὶ τὴν ἀγορὰν καὶ τὸ ἄστυ κυλιέσθαι, πᾶν τὸ τοιοῦτον γένος, ὡς εἰπεῖν, ῥαδίως ἐκκλησιάζει.*

[8] Plutarch. Pericl. c. 7. Cf. Meursius, Areopag. c. 9.

[9] Lysias: *Δήμου καταλύσεως ἀπολογία.* p. 174.

joyed in security their own comforts, became indignant at having alone to bear the whole burden of the war, and endeavoured to re-establish an oligarchy[1]. At the same time they hoped that the Persians and Lacedæmonians would be more ready to make peace with the few, than with the faithless multitude, always ready to rebel, and to forget their engagements[2]. Pisander, therefore, and Antiphon, [xxi] with some others, entered upon the undertaking.

The people, seeing no other means of safety, and flattering themselves that the change would not last, at length yielded an unwilling assent, and ten men were elected to draw up the scheme of a new constitution. These men first of all appointed five others, by whom again a hundred more were to be fixed upon, and these last chose each three assistants for himself. Thus a body of four hundred was composed, to whom was entrusted the entire management of the state. The whole system of the magistracy was now changed; the senate of five hundred broken up, and a law passed that not all the citizens, but only a portion of the rich, and of those who were in other respects well qualified for this state of things, in number five thousand, should be convened to any assembly which it might be necessary to hold; while neither judges, nor magistrates, nor any one but the soldiers, should receive pay. These were wise regulations, but they did not long continue in force. Scarcely had four months elapsed, when the people, perceiving that peace was not made, and disliking the severe control of the four hundred, as well as tired of the oligarchy and the diminution of their liberty, compelled them to abdicate, and entrusted the management of the state to a

[1] Thucyd. viii. c. 63.

[2] Thucyd. viii. 47. 53. 70. Xenoph. de Rep. Ath. c. ii. §. 17. It is not necessary here to take a complete review of this portion of history. It will be sufficient to refer the reader to Thucydides: or, among the modern writers, Taylor, vit. Lys. p. 115. seq. Petr. van Spaan (or Ruhnken), Diss. on Antiphon. p. 815. Sluiter. Lectt. Andocidd. init.

body of five thousand, who were able to arm themselves at their own expense: for the former body of that number had existed only in name, and not in reality. So many more institutions were introduced, tending to establish and strengthen the government, that at last, by a happy medium between oligarchy and democracy, the state was for some time well appointed[3]. But after the battle at Ægos Potamos, and the capture of Athens by Lysander, the Lacedæmonians, always averse to a popular government[4], changed its form again. [XXII] Thirty men were then appointed to draw up new laws, who, trusting to the protection of the Lacedæmonians, and the assistance of three thousand of the citizens who were alone permitted to carry arms, began to act in a violent and tyrannical manner. They arranged the senate and magistracies at their own arbitrary discretion, and made away with all who were conspicuous for their virtues, their authority, or their riches, or who appeared likely to create a revolution, for the most part without trial: and this was done to crush the slightest hope of the state being ever able, after so signal a fall, to recover its liberty[5]. But a band of exiles, under the conduct of Thrasybulus, seized upon Phyle, a fortress of Attica, and having increased their force, passed over to the Piræus, and fortified Munychia. They gained a complete victory over the tyrants, and reduced the occupants of the city to such straits, that the thirty were compelled to abdicate, and give up the state to the management of ten persons, elected one from each tribe. These, how-

[3] Thucyd. viii. c. 97.

[4] Some innovations were introduced even before the city was taken by the Lacedæmonians. Lysias, Eratosthen. p. 412. R. relates that after the battle at Ægos Potamos, five ephori were created, whom he calls *συναγωγεῖς τῶν πολιτῶν*, whence it is clear that their office was to hold assemblies. These facts are not mentioned by others.

[5] A law by which it was forbidden to teach oratory had this end in view. Xen. Mem. i. 2. 31. For the rhetoricians of that time taught not only the art of speaking, but also *πολιτικὴν ἐπιστήμην*, which, as instrumental to liberty, was not admired by the tyrants.

ever, commencing their office with almost equal severity, a peace, for which all were now eager, was at last effected on these terms,—that no one should be banished except the tyrants and the decemvirs, no property confiscated, and that the government of the state should again be committed to the people [6].

Peace being thus restored, [XXIII] the attention of the state was now directed towards re-modelling and amending the laws, which had been totally subverted and abused by the tyrants. To this end a decree was passed that the tables of laws should be reviewed, and any addition made to them which might appear necessary: and in the mean time the management of the state was committed to a body of twenty men [7]. By these means the government was in a short time restored to its former condition; and the liberty of the people, which had suffered nothing from these various changes, became for the future more uncontrolled. The reason of this is easily seen. First of all, the number of the aristocracy had been so reduced by the disasters of the war, and their fortunes so exhausted by the expensive liturgies, that but few remained in the state of sufficient wealth to create any alarm for the cause of liberty, or to give them confidence to oppose the people in any way. In fact, the rich were at no time exempt from the burden of liturgies. In time of war there were the trierarchies; in peace, the expensive duties of providing games and public feasts, which were heavy enough to impair no contemptible fortune, and were the more eagerly called for by the people, in order to diminish their wealth [8]. Be-

[6] See this history at length in Xenophon, Hellen. ii. c. 3—4. Diodor. xiv. c. 33, with the notes of Wesseling. Corn. Nep. Thrasybul. c. 2.

[7] Andocid. de Myster. p. 11. ed. Steph. At this time one Phormisius proposed a decree, that those only who had landed property should have a share in managing the state, but did not carry it. See Dionys. Halic. in Lysiâ, p. 92. 41. Sylburg.

[8] Xenoph. de Republ. Ath. i. 13. Ἐν ταῖς χορηγίαις αὖ καὶ γυμνασιαρχίαις καὶ τριηραρχίαις γιγνώσκουσιν, ὅτι χορηγοῦσι μὲν οἱ πλούσιοι, χορηγεῖται δὲ ὁ δῆμος· καὶ γυμνασιαρχοῦσιν οἱ πλούσιοι, ὁ δὲ δῆμος γυμνασιαρχεῖται καὶ τριη-

sides this, the informers, who were particularly abundant at Athens, like state-dogs [9], by their threats and informations, terrified and harassed [xxiv] all who offered the slightest grounds for suspicion; and the jealous and spiteful mob saw none accused with more pleasure, and punished none with greater severity, than those who were convicted of any attempt against the commonwealth [1].

In the last few years of the Peloponnesian war, the number of the people was increased by an influx of foreigners and slaves [2], who were admitted into the state. This class of persons, generally no friends of the aristocracy, prove mostly a great accession to the power of the people. They have no love for a country which they cannot call their own, are eager in demanding public largesses, ready for any undertaking, and well adapted for assisting in the evil designs of the seditious. Immediately rashness marked all the decisions of the assemblies; injustice all the verdicts in court. Abandoned rascals, of no birth and less education, profoundly ignorant of the conduct of a state, and distinguished by no merit, no virtues, but owing all their influence to the art of eloquence, or rather of cajoling, flattering, and exciting the people, began to be rising characters at the assemblies, where, by courting, fawning, and humouring their audience, they aspired to the favour of the mob, and did all that lay in their power to extend their rights, solely with a view to their own aggrandisement [3]. Hence

ραρχεῖται· ἀξιοῖ οὖν ἀργύριον λαμβάνειν ὁ δῆμος, καὶ ᾄδων καὶ τρέχων καὶ ὀρχούμενος καὶ πλέων ἐν ταῖς ναυσὶν, ἵνα αὐτός τε ἔχῃ, καὶ οἱ πλούσιοι πενέστεροὶ γίγνωνται.

[9] Thus the informers are called by the author of the first oration against Aristogeiton, p. 782, which passage Cicero seems to have had in view, pro Rosc. Amerin. cap. 20.

[1] Aristophanes attacks this propensity of his countrymen, Vesp. 482—496.

[2] Aristoph. Ran. v. 693, and Schol. Cf. Diodor. xiii. c. 97.

[3] See the work of Heyne, entitled, "A Sketch of the Liberty and Equality of Rights of the Athenians, drawn from Aristoph." in Op. Acad. iv. p. 392—415. Valkenaer, Dissertation on the Abuse of Eloquence in the Attic Republic, (in Diatrib. de Eurip. Frag. c. 23.) The word δημηγορεῖν is sometimes used of κεχαρισμένα λέγειν καὶ ἀπαίδευτα. See Heindorf. ad Plat. Gorg. §. 83.

neither the authority of the magistrates, [xxv] nor of the senate, had any weight in the state: every thing was done by the rash and ignorant decrees of the assembly. It was there that measures of peace or war were determined upon—there that trials were held—there that laws without number were passed, some contradictory to others, or of no use, and soon to be abrogated or exchanged for new ones. The counsels of the intelligent were not listened to: those who had the greatest stock of flippancy and impudence declaimed from the bema with the greatest freedom, and gained the greatest applause. Every thing was carried on amidst shouting, upbraiding, quarrelling, passion, laughter, and confusion.

In this manner the Athenian state went through a varied course of change, uncertainty, and confusion—a course which, as if prescribed by the law of Heaven, is thus summed up by one of the most able and learned in politics and antiquity of all the old historians:—*Πρώτη μὲν οὖν ἀκατασκεύως καὶ φυσικῶς συνίσταται μοναρχία· ταύτῃ δ' ἕπεται καὶ ἐκ ταύτης γεννᾶται μετὰ κατασκευῆς καὶ διορθώσεως βασιλεία. μεταβαλλούσης δὲ ταύτης εἰς τὰ συμφυῆ κακὰ, λέγω δὲ εἰς τυραννίδα, αὖθις ἐκ τῆς τούτων καταλύσεως ἀριστοκρατία φύεται. καὶ μὴν ταύτης εἰς ὀλιγαρχίαν ἐκτραπείσης κατὰ φύσιν, τοῦ δὲ πλήθους ὀργῇ μετελθόντος τὰς τῶν προεστώτων ἀδικίας, γεννᾶται δῆμος· ἐκ δὲ τούτου πάλιν ὕβρεως καὶ παρανοίας ἀποπληροῦται σὺν χρόνοις ὀχλοκρατία*[4].

But we must here pause. The object we had in view has, we trust, been attained, which was to shew in what manner and from what causes the liberty of the people, of which assemblies are the chief instrument, derived its origin and establishment in the republic of Attica, and ultimately grew into uncontrolled licence. We now, therefore, proceed at once to the subject of the assemblies, which we shall divide into three books. [xxvi]. In the first, we shall discuss the different kinds of assemblies, the times and places of holding them, the autho-

[4] Polybius, lib. vi. cap. 4.

rities by which they were convened, who had a right to vote in them, what ceremonies were used at their commencement, how subjects were proposed for discussion, speeches delivered, decrees passed, bills drawn up; and lastly, the method of dismissing the people. In the second book, we shall take a view of the subjects which were discussed, of the courts, of the passing and abrogating of laws, of the sacred rites and ceremonies, of the revenues, of creating magistrates, &c.; and in the third book, we shall enter into a short consideration of the assemblies of the tribes and demi.

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THE ASSEMBLIES OF THE ATHENIANS.

BOOK I.—CHAP. 1.

On the different kinds of Assemblies.

We may consider the Athenian assemblies (by which are meant meetings of the citizens for the purpose of discussing and determining upon public business) to have been of two descriptions. In one case, the whole of the people met for deliberation upon state affairs, in which all were equally interested; in the other, portions only of them, as certain tribes or demi, for consultation on business, which, though public, was more particularly interesting or important to those portions. The first of these meetings were called *ἐκκλησίαι*; the second *ἀγοραί* (as I infer from a passage in Æschines[1], where he says *ἔγραψε ψήφισμα Δημοσθένης, ἀγορὰν ποιῆσαι τῶν φυλῶν*). Anciently, however, this latter word had a more extended signification [XXVIII]. Thus all assemblies are by Homer termed *ἀγοραί*, a name which appears to have been adopted also in later times by the Cretans[2]. Afterwards

[1] Æschin. adv. Ctesiphont. p. 421. ed. Reisk.

[2] Lexic. Rhetor. in Bekker's Anecdota, i. p. 210. *Ἀγορὰν καλοῦσι Κρῆτες τὴν ἐκκλησίαν.* Hence the words *ἀγοράζειν* and *ἀγορᾶσθαι* in Homer for *δημηγορεῖν*, not (as Hesychius explains them) for *ἐκκλησιάζειν*: for the latter word always signifies in the best writers not *to harangue*, but *to attend the assembly*. See Xenophon. Rep. Ath. i. 9.

the place of assembly, (which was where the market was held) was called *ἀγορά*: a sense which is given by Suidas and other later Grammarians (not to mention the Christian writers) to the word *ἐκκλησία*[3]. Sometimes these meetings of the whole inhabitants, properly called *ἐκκλησίαι*, are designated by the comprehensive term, *the people:* thus such expressions as the following are of frequent occurrence, *πλήρης ὁ δῆμος*, *προσιέναι τῷ δήμῳ*, *λέγειν τῷ δήμῳ*, *συγγράφειν ἐν τῷ δήμῳ*, and many others[4].

The assemblies were either *ordinary*, and held four times in each Prytany; or *extraordinary*, when the people were convened on any emergency. These last were called *σύγκλητοι ἐκκλησίαι*. On occasions of extreme importance, when it was requisite that as many as possible should be made acquainted with, and deliberate upon, the state of affairs, the people were summoned by express from the country also, which in ordinary cases was not done. These meetings were called [xxix] *κατακλησίαι*, and the summons *κατάκλησις*[5].

We are told by some of the ancient grammarians, and almost all the modern writers on Grecian antiquities[6], that the ordinary assemblies were called *νόμιμοι*, or *κυρίαι*. About the correctness, however, of the latter term, I think great doubts may be raised. The author of this

[3] Suidas in v: *Μέτων*: *Πρὸ Πυθοδώρου δὲ, ἡλιοτρόπιον ἦν ἐν τῇ νῦν οὔσῃ ἐκκλησίᾳ πρὸς τῷ τείχει τῷ ἐν πνυκί.* The Scholiast from the Bavarian MS. on Demosthenes *de Coron.* p. 59. R. has the gloss *Πνὺξ, ἐκκλησία.* The Schol. on Lucian's *Jov. Tragœd.* c. 12. p. 236. Bip. remarks, *Πνὺξ λέγεται ἡ ἐκκλησία τῶν Ἀθηναίων, παρὰ τὸ πεπυκνῶσθαι τοῦς συνερχομένους ἐν αὐτῇ.* Cf. Schol. on *Bis accus.* c. 9. p. 59. Schol. on Aristoph. Acharn. v. 20. Etymol. Mag. in v.

[4] Aristoph. Eccles. v. 95. Xenoph. Mem. iii. 7. 1. Plat. Gorg. p. 451. b.

[5] Pollux viii. 116. Cf. Valckenär ad Ammon. Animadv. i. c. 17. p. 71. The word *κατακαλεῖν* means properly, "to call out of the country into the city:" in which sense, *καταβαίνειν εἰς ἄστυ* is used by Isocrates, Areopagit. p. 356.

[6] Except Sigon. de. Rep. Ath. ii. 4, who follows Pollux alone; Pfeifer, Antiq. Græc. ii. 35. p. 293.

opinion is the Scholiast of Aristophanes, whose remark on the following lines of the Acharnians, Suidas, as usual, transcribes[7]:

——— *οὔσης κυρίας ἐκκλησίας*
ἑωθινῆς, ἔρημος ἡ Πνὺξ αὐτῆ.

κυρίας ἐκκλησίας (says he) *ἐν ᾗ ἐκύρουν τὰ ψηφίσματα. εἰσὶ δὲ νόμιμοι ἐκκλησίαι αἱ λεγόμεναι τρεῖς τοῦ μηνὸς Ἀθήνῃσιν.——αἱ μὲν οὖν νόμιμοι καὶ ὡρισμέναι ἐκκλησίαι κυρίαι λέγονται, ὡς ἔφαμεν, κ. τ. λ.* But Pollux, Hesychius, Harpocration, give a very different account. The former says[8], *Τῶν ἐκκλησιῶν ἡ μὲν κυρία, ἐν ᾗ τὰς ἀρχὰς ἐπιχειροτονοῦσιν, εἴπερ καλῶς ἄρχουσιν, ἢ ἀποχειροτονοῦσιν. ἐν ᾗ καὶ τὰς εἰσαγγελίας ὁ βουλόμενος εἰσαγγέλλει, καὶ τὰς ἀπογραφὰς τῶν δημευομένων ἀναγιννώσκουσιν οἱ πρὸς ταῖς δίκαις, καὶ τὰς λέξεις τῶν κλήρων. Ἡ δὲ δευτέρα ἐκκλησία ἀνεῖται τοῖς βουλομένοις ἱκετηρίαν θεμένοις λέγειν ἀδεῶς περί τε τῶν ἰδίων καὶ τῶν δημοσίων. Ἡ δὲ τρίτη κήρυξι καὶ πρεσβείαις ἀξιοῖ χρηματίζειν——ἡ δὲ τετάρτη περὶ ἱερῶν καὶ ὁσίων.*

It is clear that Pollux calls only the first of the four *κυρία*, and distinguishes it from the other three. [xxx] This did not escape Petit: but he, with his usual temerity in changing, inserting, and omitting numbers, maintains that we should write *ἡ μὲν κυρία ά*: i. e. *πρώτη*, to reconcile the account of Pollux with that of the Scholiast[9]. But Hesychius also recognizes only one *κυρία ἐκκλησία*: *μία κυρία ἐκκλησία ἦγετο Ἀθήνῃσιν, ἐν ᾗ τὰς ἀρχὰς ἐπιχειροτονεῖν ἔδει*[1]. Now Pollux informs us that it was on the first assembly that the people gave their votes on the subject of the magistrates; and that assembly he too calls *κυρία*. The Scholiast, therefore, differs from Hesychius, with whom Pollux agrees. Moreover, Harpocration, by far the most learned of all the grammarians

[7] Schol. on Acharn. v. 19. Suidas in v. *ἐκκλησία κυρία*.

[8] Pollux viii, 95.

[9] Petit. Legg. Att. iii. 1. p. 277.

[1] Hesych. in v. *κυρία ἐκκλησία*, where Valesius without reason would write *ἀποχειροτονεῖν*.

in Grecian antiquities, quotes from Aristotle the following passage in explanation of the term *κυρία ἐκκλησία*: *προγράφουσι δὲ (οἱ Πρυτάνεις) καὶ κυρίαν ἐκκλησίαν, ἐν ᾗ δεῖ τὰς ἀρχὰς ἀποχειροτονεῖν, οἱ δοκοῦσι μὴ καλῶς ἄρχειν· καὶ περὶ φυλακῆς τῆς χώρας· καὶ τὰς εἰσαγγελίας ἐν ταύτῃ τῇ ἡμέρᾳ τοὺς βουλομένους ποιεῖσθαί φησι, καὶ τὰ ἐξῆς*[2]. He therefore states that one assembly was called *κυρία*, in which the question about the conduct of the magistrates was discussed, and any informations laid before the people. Now Pollux tells us that both these were done on the first. Lastly, the Etymologist says, *Κυρία σημαίνει τὴν προθεσμίαν* (in trials) *καὶ τὴν ἐκκλησίαν, ἐν ᾗ τὰς ἀρχὰς ἐχειροτόνουν* (read *ἐπεχειροτόνουν*). We see, therefore, that these four grammarians all concur in considering *one* assembly (not *several*, as the Scholiast on Aristophanes does) as *κυρία*. If authority is to have any weight, no doubt can be entertained as to which is the more credible opinion. [XXXI] We will now examine how far probability confirms or refutes these statements. Every one must see how unlikely it is, that a legislator should have appointed one assembly in each Prytany for hearing petitioners, and one for ambassadors: for what could be less likely than that on each occasion there should always be petitioners or ambassadors who had any appeal to make? Not even in the time of Cimon or Pericles, when Athens was in its glory, does this appear probable; much less, therefore, when the intercourse of Athens with other states was less frequent, and she had not yet become mistress of the sea. It seems, therefore, more probable that originally one particular assembly was appointed by Solon to be held on a certain day of every Prytany, and was thence called *κυρία*[3]. Indeed

[2] Harpocration in v. *κυρία ἐκκλησία*. Valesius and Jungermann (on the above passage from Pollux) rightly altered the common reading *προσγράφουσι* into *προγράφουσι*.

[3] It is scarcely necessary to observe, that the derivation of the word which the Scholiast on Aristophanes and others give, is false; viz. *παρὰ τὸ κυροῦν τὰ ψηφίσματα*. See Biagi, de Decretis Atheniensium c. 3. sect. 14.

all the business which Pollux states to have been transacted in the κυρία ἐκκλησία is of such a nature as could not but have occurred in each Prytany. If anything momentous, which would admit of no delay, unexpectedly occurred, an extraordinary assembly was convened. But when the state, (and together with it the business to be transacted,) increased, these additional assemblies were regulated and defined by law, in the order described in the passage quoted above from Pollux, though the term κυρία was still reserved for the assembly originally so called. However this may be, we cannot assert that four assemblies, and not less, were invariably held every Prytany, and that the above arrangement for the transaction of business was [xxxii] immutably established. At all events Aristophanes in the *Acharnians* represents the ambassadors just returned from the kings of Persia and Thrace, as relating the result of their embassy to the people at a κυρία ἐκκλησία[4]. Now were this directly contrary to custom, it would have been too great a licence for even a poet to assume. Pollux, therefore, gives a true account in general of the usual observances which prevailed in this respect.

To revert to the Scholiast on Aristophanes. There appears to be some truth in his account also, which states that there were three κυρίαι ἐκκλησίαι every *month*. For Pollux and Harpocration follow Aristotle, and describe that form of government, and those laws and institutions, which he had seen and committed to memory. But not many years after Aristotle's time, many innovations were introduced into the Attic republic; and perhaps also the system of the assemblies was so far changed, that the name κυρία was applied to all the ordinary ones. To adduce some authority for this supposition, there is extant in Diogenes Laërtius[5], a decree passed by the Athenians in honour of Zeno, which, though suspected, does not

[4] See Kühn on Pollux, viii. 96.

[5] Vit. Zenon. s. 10. p. 371. ed. Meibom.

appear positively unworthy of all credit[6]. In this we find mention of a *κυρία ἐκκλησία, τρίτῃ καὶ εἰκοστῇ τῆς πρυτανείας*, which unquestionably could not have been the first in that Prytany. If, therefore, any authority is to be given to it, it is clear, that the other assemblies as well were called *κυρίαι*. I hope soon to shew that our Scholiast had in view the times subsequent to Ol. cxviii. 2. and referred customs then prevalent to an earlier period.

CHAPTER II.

On the particular Days of holding the Assemblies.

[XXXIII] An opinion is very commonly entertained, originating chiefly from Petit[1], that the four regular assemblies in each Prytany were held on fixed days, viz. the eleventh, twentieth, thirtieth, and thirty-third: and that writer has made out an Attic calendar, in which the commencement of every Prytany and the particular days of the assemblies are marked. In my endeavours to shew the fallacy of this opinion, I must first of all beg, that no one will imagine that my anxiety to adduce some new information on this subject has led me into the wish to oppose the views of the most learned men. Than such presumption nothing is more adverse to my feelings: my plan has been myself to examine with diligence the whole subject, and admit as certain nothing but what is capable of being either proved by the testimony of ancient authors, or at least confirmed by high probability. Keeping, therefore, this course in view, we will proceed to examine the grounds upon which this calendar is drawn up.

In an ordinary lunar year, consisting of three hundred and fifty-four days, it is well known, and is an indisput-

[6] See Brucker's Hist. Philos. ii. 10.

[1] Petit, Legg. Att. iii. 1. p. 278—283.

able fact [2], that each Prytany comprised thirty-five or thirty-six days. For, if we divide these three hundred and fifty-four days into ten Prytanies, we shall find each one to contain thirty-five days and four over. Now of this residue one day used to be added to each of either the four first or the four last Prytanies, so that four of them contained thirty-six days. The former opinion is held by Sigonius, [xxxiv] Dodwell, and Corsini, on the authority of Suidas [3]; yet the latter seems capable of proof from an ancient inscription, which, in an account of money spent out of the treasury by decree of the people, in the archonship of Glaucippus, (Ol. xcii. 3.) and a statement of the days in the Prytanies on which each sum was expended, specifies the thirty-sixth day of the eighth, ninth, and tenth Prytany [4]. But in a leap-year, which consisted of three hundred and eighty-four days, the Prytanies must have been of thirty-eight or thirty-nine days each: although in this case it is equally uncertain whether the first or the last four were the longest. However this may have been, the theory of Petit is untenable, that these four remaining days were added to the first four Prytanies in such a manner that the four tribes which had held their respective Prytanies at the beginning of the year, should

[2] See the second argument to the oration of Demosthenes, *Adv. Androt.* p. 590. R. See also Petavius, Doctr. temp. ii. 1, who tacitly corrects some corrupt passages in that argument.

[3] Suid. in v. Πρυτανεία.—ἐπερίττευον ἐκ τοῦ σεληνιακοῦ ἐνιαυτοῦ ἡμέραι τέσσαρες, ἃς ἐπεμέριζον ταῖς πρώταις λαχούσαις πρυτανεύειν τέσσαρσι φυλαῖς· καὶ τῶν μὲν τεσσάρων πρωτῶν ἑκάστη εἶχε τὴν πρυτανείαν ἀπαρτιζομένην εἰς λς' ἡμέρας, αἱ δε' λοιπαὶ ς' ἀνὰ λέ. See Sigon. de Republ. Ath. ii. c. 3. Dodwell de Cyclis. Dissert. i. sect. 9 and 10. Corsin. Fast. Att. Dissert. iii. n. 28.

[4] This year (Ol. xcii. 3.) is the fourth of the second Metonic period. Now if we allow that the Athenians used that period for correcting their lunar years, this year must be considered an ordinary one. I confess, however, that it appears to me very doubtful, whether the use of this period was publicly received or not; and if it were so, in what manner they applied it to the arrangement of their calendar. See Petavius, Doctr. temp. i. 14. and ii. 13. Also Ideler: Ueber die Astronomischen Beobachtungen der Alten, p. 208, sq.—The inscription I have mentioned has been published by Boeckh. Publ. Econ. of Athens, Inscript. Tab. i. No. 1.

again be in office at the end of it, (that is, after three hundred and fifty or three hundred and eighty days,) for one day each. With this opinion, Petit must of course have wrongly settled the beginning of either all, or at least of the three last Prytanies. [xxxv].

Petit's next error is in arranging the full and the deficient months. The Athenian months consisted alternately of thirty and twenty-nine days; the former they called *solid*, or full, (πλήρεις) and the latter *hollow*, or deficient, (κοιλούς). Now it is known that the last Attic month, Scirrophorion, was deficient, and the first, Hecatombæon, full: so that, if they came alternately, Boedromion, Mæmacterion, Gamelion, Elaphebolion, and Thargelion, must have been full; Metagitnion, Pyanepsion, Posideon, Anthesterion, and Munychion, deficient months[5]. Now Petit has just reversed this order, as has been noticed by others[6].

Petit is again in error, in thinking that the second day (τὴν δευτέραν ἱσταμένου) of the months which he thinks deficient, (but which we have shewn to be full,) was omitted in reckoning: and in Hecatombœon, for instance, he thus falsely counts τρίτη next to νουμηνία. The error is two-fold: first, in leaving out a day from the month which allows no such omission; and secondly, that day, which is not even in the deficient months omitted. For, although it is certain that for uniformity of computation, some one day was passed over in counting, since the last day of the deficient months also was called τριακὰς, whereas it was really only the twenty-ninth[7]; yet the opinion of Petit, and his predecessor in this view, Scaliger, that the second day of these months was suppressed, is incapable of any satisfactory proof[8]. On this subject two

[5] See Ideler, p. 199, seq. and Buttmann on the true Order of the Months, in the same publication, p. 383, seq. On Boedromion and Pyanepsion, however, see infra.

[6] Corsin, Fast. Att. Diss. ii. n. 10, seq. and Biagi de Decret. Athen. ii. sect. 15.

[7] See Ideler, p. 184, seq.

[8] See Corsin, Fast. Att. Diss. ii. n. 12, 13.

different opinions have been propagated; one by Theodore Gaza, the other by Proclus. The former thinks it can be proved from a passage in Pollux, that after the εἰκάς, the ἐννάτη φθίνοντος immediately succeeded in the computation. The passage is this[9]: τὸ δὲ ἀπὸ τούτου (sc. ἀπὸ τῆς εἰκάδος) ά ἐπὶ εἰκάδι. ἡ δὲ αὐτὴ καὶ θ' φθίνοντος. θ' γὰρ λοιπὰ ἀπὸ τῆς κά. Hence Gaza infers, that in this passage Pollux is only enumerating the days of a deficient month, in which he states that the twenty-first day was also called ἐννάτη φθίνοντος. Petavius[1] follows this opinion, but thinks the passage in Pollux corrupt, and to be thus emended: ὅτε θ' γίνεται λοιπὰ ἀπὸ τῆς κά; or that Pollux would speak too vaguely and indefinitely. Now Dodwell[2] and Jungermann have restored the genuine reading from a MS., which is this: πρώτη ἐπὶ εἰκάδι. ἡ δὲ αὐτὴ καὶ δεκάτη φθίνοντος. καὶ δευτέρα ἐπὶ εἰκάδι· ἡ δὲ αὐτὴ καὶ ἐννάτη φθίνοντος. If this reading be admitted, the opinion of Gaza must fall to the ground[3]. There remains that of Proclus, who tells us that the δεύτερα φθίνοντος was omitted. This view, which is approved by Dodwell, is thought by some to be refuted by another passage in Pollux[4], where he says of the Areopagites: καθ' ἕκαστον δὲ μῆνα τριῶν ἡμερῶν ἐδίκαζον ἐφεξῆς, τετάρτῃ φθίνοντος, τρίτῃ, δευτέρᾳ. It is alleged, that, if the δευτέρα had been omitted in the deficient months, Pollux [37] would have been more express in his statement. I think, however, that such particular accuracy was hardly necessary in that place, and I confess it does not afford me satisfactory grounds for rejecting the opinion of Proclus.

[9] Pollux, i. 63.

[1] Petav. Doctr. Temp. i. c. 5. extr.

[2] Dodwell, de Cyclis Dissert. i. sect. 38.

[3] Moreover, the δεκάτη φθίνοντος of the month Scirrhophorion, which was deficient, is enumerated by Demosthenes, de Fals. Leg. p. 359. R. ὑστέρα τοίνυν δεκάτη, ἐννάτη, ὀγδόη. ὑστέρα δεκάτη is δεκάτη φθίνοντος. See Hesych. in v. δεκάτη προτέρα.

[4] Proclus on Hesiod, Op. et D. v. 766; Dodwell, de Cyclis Dissert. i. sect. 38; Pollux, viii. 117; Corsini (quoted above); Ideler, p. 325.

On account of these faults in the above calendar, when the lengths of the months, the rule for the omitted days, and the commencement of each Prytany, are wrongly made out, it is impossible that the particular days of holding the assembly should have been correctly laid down by Petit. I am now supposing that his opinion is correct, viz. that there were certain days appointed for this purpose in every Prytany, the eleventh, twentieth, thirtieth, and thirty-third: I hope, however, to shew directly that this is in the highest degree questionable. The inscriptions, decrees, and various passages in the Greek writers, which have been adduced by Petit in support of his calendar, are of no weight if viewed correctly. Take the first ancient inscription from Gruter[5]:

Ἐπὶ Ἀρισταίχμου ἄρχοντος, Γαμηλιῶνος δεκάτῃ ἱσταμένου, ἐκκλησία κυρία ἐν τῷ ἐκκλησιαστηρίῳ. Μένανδρος Μενάνδρου Μελιτεὺς εἶπεν, κ. τ. λ.

Now this inscription is not Attic, but Delian[6]: nor was it written in the times to which this calendar refers, but after the 118th Olympiad, when the Athenians had both in Attica and also indisputably in Delos, not ten, but twelve Prytanies. For, in the second year of that Olympiad, when Demetrius Poliorcetes had liberated the city from the usurpation of Cassander, the Athenians, in honour of the victor, among other things [38] added two new tribes to the former ten, to be called by the names of Demetrius and his father Antigonus. And this number of tribes remained, though the names of Ptolemais and Attalis were substituted for those of Demetrias and Antigonis, till the time of Hadrian, when a thirteenth tribe, called the Hadrianian, was added. It is clear, that when the number of the tribes was increased, the order of the Prytanies and days of assembly must also have been changed: whence it appears that Petit has not made a

[5] Gruter, Thesaur. Inscrip. p. 406. This inscription is also given by Fanelli: Atene Att. p. 322; Montfaucon, Diar. Ital. p. 43, 44; Biagi, de Decret. p. 430, for which references I am indebted to Boeckh.

[6] Corsin. Fast. Att. Diss. vii; See Biagi de Decret. ii. sect. 14.

right use of this inscription. The same may be said of the decree in Josephus, which is next adduced by Petit in support of his view:

Μηνὸς Πανέμου πέμπτῃ ἀπιόντος, ἐπὶ Ἀγαθοκλέους ἄρχοντος, Εὐκλῆς Μενάνδρου Ἁλιμούσιος ἐγραμμάτευε, Μουνυχιῶνος, ἐνδεκάτῃ τῆς πρυτανείας, ἐκκλησίας γενομένης ἐν τῷ θεάτρῳ. This decree also belongs to the time of the twelve Prytanies; nor does the month Panemus of the Syro-Macedonians correspond so accurately as Petit imagines to the Attic month Munychion. As for his citing Æschines in proof of this, I should be inclined to stigmatize it as absurd, did not another still greater absurdity remain to be noticed. Æschines accused Demosthenes, who had proposed a law, *ἐκκλησίαν ποιεῖσθαι τοὺς πρυτάνεις τῇ ὀγδόῃ ἱσταμένου τοῦ Ἐλαφηβολιῶνος μηνὸς, ὅτε ἦν τῷ Ἀσκληπιῷ ἡ θυσία, καὶ ὅτ' ἦν προαγὼν, ἐν τῇ ἱερᾷ ἡμέρᾳ, ὃ πρότερον οὐδεὶς μέμνηται γενόμενον*[7]. Is it not evident, that the objection raised against Demosthenes consists in decreeing that the people should be convened on a festival, contrary to the laws and the customs of his ancestors? Yet Petit pretends not to see this, when he says, "Hoc die cogebatur pro more" (whence did he learn this custom, except from his own calendar?) "concio quarta *τῶν κυριῶν*, in quâ *περὶ ἱερῶν καὶ ὁσίων* agebatur; sed Demosthenes voluit referri de legatis ad Philippum [39] mittendis, atque id unum est, quod Æschini improbatur." Of course we must suppose the words *ὅτε ἦν τῷ Ἀσκληπιῷ ἡ θυσία, καὶ ὅτ' ἦν προαγὼν, ἐν τῇ ἱερᾷ ἡμέρᾳ*, to be merely added without any force or meaning, and just by way of an elegant expletive. But we need not say more: it is quite certain that on that day no assemblies were ever held, either about sacred or profane matters, embassies, or any thing else whatever; and this is the very reason (viz. because it was *not* one of the regular days,) that Demosthenes proposed an extraordinary summons should then be given, which summons would have been unnecessary if a regular assembly was to have

[7] Æschin. Advers. Ctesiphont. p. 455 sq. R.

been held on that day. But all these mistakes are nothing in comparison with his absurdities about holding regular assemblies on the second day of the Thesmophoria. In the Thesmophoriazusæ of Aristophanes, (v. 78,) the women are represented as holding a meeting in judgement on Euripides, on a day which is thus designated by Mnesilochus:

——— νῦν γ' οὔτε τὰ δικαστήρια
μέλλει δικάζειν, οὔτε Βουλῆς ἔσθ' ἕδρα,
ἐπεὶ τρίτη 'στὶ Θεσμοφορίων ἡ μέση.

Now the third day of the Thesmophoria is the sixteenth of Pyanepsion; but Petit, learning from his own Calendar that ordinary assemblies were to have been held on the fifteenth, on which not even the women in their meetings are to be exempt from the law of the Calendar, nor the poet in his fictions, first of all corrupts the verse of Aristophanes into an elegant solecism,

ἐπεὶ τρίτης ᾗ Θεσμοφορίων ἡ μέση,

and next explains it in a manner all but unintelligible. He says, that the four days of the Thesmophoria (there happen to have been five) are divided by Aristophanes into three equal portions, each containing thirty-two hours; and that the second of these is here meant, beginning about sunrise, on the second day of the Thesmophoria, or fifteenth of Pyanepsion, when ἡ περὶ [40] ἱερῶν κυρία ἐκκλησία was held, which is the fourth of the Prytany. Although such ideas have been already exploded[8], it would hardly be credited, except by one who had seen it, that a man of sense and learning, and one who assumes the character of a critic, should expect to find in the jokes of a comic poet, and in a mock assembly of women of his invention, a strict observance of all rules and institutions of the state, so as to imagine it absolutely necessary that the sham assembly should be made to fall on the very day of holding the real one.

It now remains for us to examine the two decrees

[8] See Wesseling on Petit, p. 284.

which Petit has brought forward from the oration of Demosthenes *de Coronâ*. One is thus headed: *Ἐπὶ Μνησιφίλου ἄρχοντος, συγκλήτου ἐκκλησίας ὑπὸ στρατηγῶν γενομένης, καὶ πρυτάνεων καὶ βουλῆς γνωμῇ, Μαιμακτηριῶνος δεκάτῃ ἀπιόντος Καλλισθένης Ἐτεονίκου Φαληρεὺς εἶπε*[9]. It is clearly stated that on the *δεκάτῃ φθίνοντος* of Mæmacterion (which Petit makes the twentieth, but which is really the twenty-first), an extraordinary assembly was convened by the Strategi; and consequently this was not a regular day. But here Petit examines his Calendar, finds *κυρία ἐκκλησία* marked at this day, and immediately fabricates a new and unheard of signification of the term *συγκλήτου ἐκκλησίας*. For he strangely maintains, that the *κυρίαι ἐκκλησίαι* were also called *σύγκλητοι*, if on any occasion of peculiar importance the Strategi, even on a regular day, summoned the people, in order to ensure a more numerous attendance. But he omits to prove this by any sufficient argument: and the authors of such assertions may expect to be flatly contradicted at once. The other decree is headed as follows: *Ἐπὶ ἄρχοντος Μνησιφίλου, Ἑκατομβαιῶνος ἕνῃ καὶ νέᾳ, φυλῆς πρυτανευούσης* [41] *Πανδιονίδος, Δημοσθένης Δημοσθένους Παιανιεὺς εἶπεν*[1]. Now this passage would have gone the furthest of all in proving the opinion of Petit, that the thirtieth of every Prytany was a day of assembly, had he made the month Hecatombæon, as he should have done in his Calendar, full, and not deficient: for the thirtieth of Hecatombæon must necessarily correspond with the thirtieth of the first Prytany. But Petit, conceiving Hecatombæon to be a deficient month, had brought over the thirtieth day of the first Prytany to the first day of Metagitnion; in order, therefore, to get some good still out of this decree, he devised another way to clear himself. He tells us it was a proposal of the senate, to be laid before the people the next day; though he declines to inform us whence he got his information. I, however, think it

[9] De Coron. p. 238. R.

[1] De Coron. p. 235. R.

highly improbable, that the orator should have omitted a decree of the people, and quoted in preference a bill of the Senate, which, without the approbation of the people, was null and void. The readers of Demosthenes and Æschines well know how obscure, and difficult to explain, the time specified in that decree really is. For there we find assigned to the thirtieth of Hecatombæon[2], what we know, from the perfectly consistent accounts of both orators, to have been done between the nineteenth and twenty-fourth of Elaphebolion. Corsini hence considers the passage corrupt, and for *Ἑκατομβαιῶνος* [42] *ἕνῃ καὶ νέᾳ*, writes *Ἐλαφηβολιῶνος ἐννάτῃ φθίνοντος*. We meet with an equal embarrassment in another decree of the same oration; where a measure is stated to have been passed on the twenty-first of Mæmacterion, which we learn from Demosthenes (de Fals. Leg. p. 359, seq.) was passed on the twenty-seventh of Scirrhophorion, eight months afterwards. Here therefore again Corsini would alter the reading *Μαιμακτηριῶνος δεκάτῃ ἀπιόντος*, into *Σκιρροφοριῶνος τετράδι φθίνοντος*. But both these corrections, though they suit the dates of the transactions which we have from other sources, depart too widely from the received text to be universally approved. Taylor would alter nothing, but attempts to account for the discrepancy of dates between the decrees and the other sources of information, by some alteration introduced into the Greek Fasti; and it is certain that such was made, perhaps more than once, particularly after the Julian year, which was received by the Greeks also. "In this way," he remarks, "it might have happened, that besides the ancient edition of the orators, another was published, for common use, adapted to the computa-

[2] This subject is discussed at length by Corsini Fast. Att. Dissert. iii. 17. ii. 15, and Taylor on Demosth. de Coron. p. 235, to which writers I must now beg to refer my readers; although it is sufficient to indicate the passages of Æschines and Demosthenes, where the whole subject of dispute is contained. Æsch. adv. Ctesiph. p. 455, 456. 458. De Fals. leg. 259, 268. Demosth. de leg. 359.

tion of time then commonly in use. If this be true, these transactions are not described as taking place at different times of the year in the two calculations, nor do the orators assign one date and the public monuments another, but both accounts may be true, if in the one case we look to the ancient æra, and in the other to the common one." This is a highly original and ingenious idea, but I doubt much of its correctness, and I could adduce several proofs in refutation of it, were it my province here to do so. However, whatever solution we may apply to the apparent inconsistencies of the decrees, [43] it is very plain that they furnish no argument to the question of the days of assembly.

I have stated above, that nothing can be more uncertain than the opinion which Petit and others after him entertain, that the eleventh, twentieth, thirtieth, and thirty-third days of each Prytany were appointed for holding assemblies. This statement I now proceed to support by proofs. Ulpian and the Scholiast on Aristophanes are first cited by Petit, the former of whom on the Timocrates of Demosthenes (p. 445. ed. Benenat.) has these words. *Ἰστέον γὰρ, ὅτι κατὰ μῆνα τρεῖς ἐκκλησίας ἐποιοῦντο βουλευόμενοι περὶ τῶν ἐν τῇ πόλει πραγμάτων, εἰ μὴ ἄρα ἀνάγκη τις κατέλαβε πολέμου, ὥστε καὶ περὶ ἐκείνου ἄλλην ἐκκλησίαν ποιῆσαι πλέον τῶν ὡρισμένων. καὶ ἐγίνετο ἡ πρώτη, ἐνδεκάτῃ τοῦ μηνὸς, ἡ δὲ δευτέρα περὶ τὴν εἰκοστὴν, ἡ δὲ τρίτη περὶ τὴν τριακοστήν.*—The Scholiast on Aristophanes is commonly read thus: *εἰσὶ δὲ νόμιμοι ἐκκλησίαι αἱ λεγόμεναι τρεῖς τοῦ μηνὸς Ἀθήνησιν, ἡ πρώτη καὶ ἡ δεκάτη καὶ ἡ τριακάς*[3]; but Petit, observing this account to differ from that given by Ulpian, thus alters the passage: *ἡ ἐνδεκάτη, καὶ ἡ εἰκάς, καὶ ἡ τριακάς*; observing that the

[3] Schol. ad Acharn. v. 19. Suidas has transcribed the passage; but more properly reads, *νόμιμοι ἐκκλησίαι αἱ λεγόμεναι κυρίαι.* But the latter (in v. *κυρία ἐκκλησία*) has followed Harpocration, who, making no mention of the months, assigns four ordinary assemblies to every Prytany, and informs us that of these one only, the first, was called *κυρία.*

error clearly arose from the use of numeral letters. But, even allowing this emendation to be right, there cannot be sufficient weight in the authority of writers, who allude to the days of the months, and not of the Prytanies; and who do not inform us that four assembles were held every Prytany, but three every month. And there certainly seems some reason for this statement of theirs, though it be not well adapted to the passages which they are explaining. Petit accuses them of error, but is himself more open to a similar accusation [44] in attempting, by a most extraordinary interpretation, to refer to the time when there were ten tribes, what really refers to the time when there were twelve; just as if these grammarians, intending to inform us on what days of the Prytanies the assemblies used to be held, had by mistake named the days of the months. But there is no doubt they have said just what they intended to say: for it is certain they alluded to those times, when, the city being divided into twelve tribes, the Prytanies were also twelve, or one month each[4]; so that it was the same thing whichever term they used. Thus Timæus, in his Lexicon, says, *πρυτανεία· μηνιαῖα φυλῆς ἀρχή*: and the Etymologist, *πρυτανεία· ἀριθμὸς ἡμερῶν τριάκοντα*; although the latter directly adds, from some other source, *πρυτάνεις· τὸ δέκατον μέρος τῆς βουλῆς τῶν πεντακοσίων*, κ. τ. λ., which refers to the earlier times. But there is no fault more common in these grammarians, than the confusion of things distinct from each other both in time and place. Ulpian and the Scholiast on Aristophanes tell us what is certainly true, though perfectly foreign to

[4] Jul. Pollux. viii. 115. *Πρυτανεία δέ ἐστι χρόνος, ὃν ἑκάστη φυλὴ πρυτανεύει. καὶ ὅτε μὲν δέκα ἦσαν, πλείους ἑκάστῃ φυλῇ αἱ ἡμέραι. ἐπεὶ δὲ δώδεκα ἐγένοντο, ἑκάστη φυλὴ μηνὸς πρυτανείαν ἔχει.* See Dodwell, de Cyclis Dissert. i. sec. 9. Vales. ad Harpocrat. p. 166. Ammonius is quoted by both, where (in v. *πρυτανεία*) it used to be read, *τοὺς μισθοὺς καὶ τὰ ἐνοίκια καὶ τὰς πρυτανείας κατὰ μῆνα ἐτέλουν*, which is corrupt, and evidently nonsense. Salmasius had perceived that the true reading was, *κατὰ πρυτανείας οὐ κατὰ μῆνα ἐτέλουν*, and Valckenaer has admitted it. See also Biagi, de Decr. Ath. c. xi. §. 11.

the times of the writers they are explaining. For after Ol. cxviii. there is no reason to doubt that three assemblies were held every Prytany, or month (which is the same thing), and about those days too which Ulpian assigns; only we are not to suppose [45] that any thing positively certain and unalterable was determined about them; as indeed appears from Ulpian's own words; *περὶ τὴν εἰκοστὴν, περὶ τὴν τριακοστήν.* In Diogenes Laertius we certainly have an ordinary assembly mentioned *τρίτῃ καὶ εἰκοστῇ τῆς πρυτανείας*[5]; and in the decree of the Delians, who accurately observed the institutions of their mother country Attica, we find, *κυρία ἐκκλησία Γαμηλιῶνος δεκάτῃ ἱσταμένου*; which day was also, no doubt, the tenth of the Prytany. But the eleventh day is named in the decree which I have quoted from Josephus, and perhaps also in another, copied from Fourmont, and sent to me by Boeckh; the beginning of which, as I shall have again to refer to it, I will here subjoin, mutilated and corrupt as it is.

. . . . . ΣΟΝΙΚΟΥ ΑΡΧΟΝΤΟΣ ΕΠΙ ΤΗΣ ΛΕΩΝΤΙΔΟΣ . . . ΤΗΣ
[Π]ΡΥΤΑΝΕΙΑΣ ΗΙ ΠΑΥΣΑΝΙΑΣ ΒΙΟΝΕΛΟΥ ΠΕΡΙΘΟΙΔΗΣ
[ΕΓ]ΡΑΜΜΑΤΕΥΕΝ . . Ν . . . ΙΩ . . . . . ΕΑΤΕΙΟΝΔΟΣ.
. ΑΓΔΕΚΑΤΕΙ ΤΗΣ [ΠΡ]ΥΤΑΝΕΙΑΣ ΕΚΚΛΕΣΙΑΣ ΚΥΡΙΑΣ.
[Τ]ΩΙ ΘΕΑΤΡΩΙ ΤΩΝ ΠΡΟΕΔΡΩΝ ΕΠΕΨΗΣΙ[Σ]ΕΝ ΕΡ . . ΘΕ
. ΗΣ ΕΥΘΥΚΛΕΟΥΣ ΠΡΟΒΑΛΙΣΙΟΣ ΚΑΙ ΣΥΜΠΡΟ[Ε]Δ[Ρ]Ο[Ι]
ΕΔΟΞΕΝ ΤΕΙ ΒΟΥΛΕΙ ΚΑΙ ΤΩΙ ΔΗΜΩΙ
[Α]ΡΧΙΑΣ ΑΝΔΡΟΚΛΕΟΥΣ ΦΗΓΑΙΕΥΣ ΕΙΠΕΝ ΕΠΕΙΔΗ
ΦΙΛΕΤΑΙΡΟΣ Ο ΤΟ[Υ] ΒΑΣΙΛΕΩ[Σ] ΕΥΜΕΝΟΥΣ ΑΔΕΛΦΟΣ.

[46] In the fourth line we should perhaps write *ΕΝΔΕΚΑΤΕΙ*, and in the first, without doubt, *ΛΕΟΝ-*

[5] Vit. Zenon. s. 10. *ἐπὶ Ἀρρενίδου ἄρχοντος, ἐπὶ τῆς Ἀκαμαντίδος, πέμπτης πρυτανείας, Μαιμακτηριῶνος δεκάτῃ ὑστέρᾳ, τρίτῃ καὶ εἰκοστῇ τῆς πρυτανείας, ἐκκλησία κυρία, τῶν Προέδρων ἐπεψήφισεν Ἵππων Κρατιστοτέλους Ξυπεταιών.* It is singular that in this decree the twenty-first day of the month should correspond with the twenty-third of the Prytany, when we know that the month and the Prytany had then the same limits. Perhaps it is to be explained from their system of intercalary and omitted days, the laws of which we do not understand. See Ideler, p. 204.

ΤΙΔΟΣ, with some ordinal number, as *ΤΡΙΤΗΣ*. I am not at present able to emend and supply the rest; nor would it be essential if I could.

But to return to Petit. I trust I have sufficiently shewn how unfairly he has used the testimony of Ulpian, and the Scholiast on Aristophanes, in determining on what days of the ten more ancient Prytanies ordinary assemblies were held. But he has been still more hasty and inaccurate in deciding upon the day of the fourth assembly, of which they make no mention, from the *Acharnians* of Aristophanes. In that play, the Thracians are brought before the people, but the assembly having been dismissed on account of a διοσημία, are required to attend the day but one after that, εἰς ἔνην. (v. 172.)

> τοὺς Θρᾷκας ἀπιέναι, παρεῖναι δ' εἰς ἔνην·
> οἱ γὰρ πρυτάνεις λύουσι τὴν ἐκκλησίαν.

Petit, as if these words were told by some grave historian or orator, and not by a comic poet, imagines that the third of the regular assemblies must here be meant, on account of the introduction of the ambassadors; and thinks that from the words εἰς ἔνην, (by which the Thracians are meant to be sarcastically discharged,) the regular day of the next (i. e. the fourth) assembly may be distinctly inferred. Assigning therefore this assembly in the comedy, not to the festival of the Lenæa, on which it was acted, but to the first day of Metagitnion, which he falsely supposes to have been the thirtieth day of the first Prytany; he persuades himself that the next assembly, being the fourth, on which the Thracians are to return, was to be held three days afterwards; that is, on the thirty-third of the Prytany, and the fourth of Megagitnion. These are such flagrant blunders that it is a pity to waste time in refuting them; though one thing may be particularly pointed out; viz. that Petit has not even understood the words εἰς ἔνην, which are rightly explained by the Scholiast, εἰς τρίτην. Now our author has taken them to mean "three days after," so as to imply

two days intervening; [47] whereas they really mean on the day after to-morrow, *τὸ μετὰ τὴν αὔριον*, in the words of Hesychius. The fourth assembly ought therefore to have been assigned by him to the thirty-second, not the thirty-third, of the Prytany.

The above remarks clearly shew, that we know nothing with any certainty about the order in which the days for holding assemblies recurred; and that in fact all we do know is, that four regular ones were to be held every Prytany. Should any one surmise that they occurred at nearly equal intervals, I admit its high probability, but deny the possibility of its proof. For in the absence of express testimony of the ancients, the only way of arriving at the truth would be, to compare, from the number of extant decrees, all those which appear to have been passed at ordinary assemblies; of which kind are several in Demosthenes, as *de Coronâ*, p. 253, *Ἐπὶ Χαιρώνδου Ἡγέμονος ἄρχοντος Γαμηλιῶνος ἕκτῃ ἀπιόντος, φυλῆς πρυτανευούσης Λεοντίδος, Ἀριστόνικος Φρεάρριος εἶπεν.* Ibid. p. 265, *Ἄρχων Δημόνικος Φλυεὺς, Βοηδρομιῶνος ἕκτῃ μετ' εἰκάδα, γνώμῃ βουλῆς καὶ δήμου, Καλλίας Φρεάρριος εἶπεν.*—p. 266, *Ἐπὶ ἄρχοντος Εὐθυκλέους, Πυανεψιῶνος ἐννάτῃ ἀπιόντος, φυλῆς πρυτανευούσης Οἰνηΐδος, Κτησιφῶν Λεωσθένους Ἀναφλύστιος εἶπεν.* More instances might perhaps be adduced, particularly by those who have access to collections of ancient inscriptions, from the use of which I am unfortunately debarred; but these will be sufficient to shew my object. In the next place, two calendars should be made out, one for ordinary, and the other for leap years, and the commencement of each Prytany marked down in both; though much would have to be done by the aid of conjecture, as the system of the Attic Fasti is a subject of great obscurity. If, however, we suppose that in an ordinary year the first six Prytanies were of thirty-five, and the last four of thirty-six days each; and [48] in a leap-year the former were of thirty-eight, the latter of thirty-nine days each; and that the second of Boëdromion was

omitted in counting, and assigned to the next month Pyanepsion to make it a full instead of a deficient month[6]; we shall then have the following series of the Prytanies:—

A.] *In an Ordinary Year.*

	DAY		DAY
Pryt. I. Hecatombæon	1.	Pryt. II. Metagitn.	6.
Pryt. III. Boëdromion	13.	Pryt. IV. Pyanepsion	18.
Pryt. V. Mæmacterion	23.	Pryt. VI. Posideon	28.
Pryt. VII. Anthesterion	4.	Pryt. VIII. Elaphebol.	11.
Pryt. IX. Munychion	17.	Pryt. X. Thargelion	24.

B.] *In a Leap Year.*

	DAY		DAY
Pryt. I. Hecatombæon	1.	Pryt. II. Metagitnion	9.
Pryt. III. Boëdromion	19.	Pryt. IV. Pyanepsion	28.
Pryt. V. Posideon 1.	5.	Pryt. VI. Posideon 2.	14.
Pryt. VII. Gamelion	22.	Pryt. VIII. Elaphebolion	2.
Pryt. IX. Munychion	11.	Pryt. X. Thargelion	21.[7]

If now we examine the times of these decrees by a comparison with the above tables, we shall find that the first, which bears the date of the twenty-fourth of Gamelion, was passed, if we take an ordinary year, on the twenty-seventh day of the sixth Prytany; or, if we take a leap-year, on the second day of the seventh. The other, which is dated the twenty-sixth of Boëdromion, will have been passed either on the fourteenth or the seventh of the third Prytany; and the last, dated the twenty-second of Pyanepsion, on either the fourth or the thirty-third of the fourth Prytany. Now let the reader judge what hopes of advantage are to be derived from

[6] Plutarch. de Fratern. Amor. Op. t. ii. p. 489. R. *τὴν γὰρ δευτέραν ἐξαιροῦσιν ἀεὶ τοῦ Βοηδρομιῶνος, ὡς ἐν ἐκείνῃ τῷ Ποσειδῶνι πρὸς τὴν Ἀθηνᾶν γενομένης τῆς διαφορᾶς.* See Petav. Doctr. Temp. i. c. 5. extr. and c. 12. extr.

[7] Corsini has drawn up a similar table, Fast. Att. Diss. iii. n. 29, but a little differently; for he has made the first Prytanies, and not the last, the longest, and has not omitted the second of Boëdromion; besides which he has placed Pyanepsion after Mæmacterion, which I think incorrect, with Buttmann, in Ideler, p. 383.

this system. For my part I expect no more than the evidence it affords of the futility of laying down any certain laws upon the days or the intervals of holding the assemblies.

But there is another reason which inclines me to believe that the Athenians themselves had NO fixed and definite days of assembly in any Prytany: and that is, the immense number of their festivals. So many indeed had they, that Xenophon tells us they kept twice as many as any other nation; and they are called for this reason by other writers *πάντων ἀνθρώπων εὐσεβέστατοι*[8]. We are moreover ignorant of the exact times at which the greater part of these were held. Now nothing can be more probable than that if assemblies were to be held on any particular days of a Prytany, say for instance the eleventh and the twentieth, some festival would fall on those very days of the next Prytany; and therefore no assembly could be held on them. If this be once allowed, (and I know not how it can be denied,) it clearly follows that there were no regular and unalterable days of holding assemblies; for it is admitted by all, that on a holiday (*ἱερομηνίᾳ*[9]) no business was allowed to be transacted either in the courts, the assembly, or the senate, excepting it in any way related to the festivity itself. This we know from Demosthenes: *ἁπάντων ὑμῶν* [50] *ἀγόντων ἱερομηνίαν, καὶ νόμου κειμένου, μήτ' ἰδίᾳ μήτε κοινῇ μηδὲν ἀλλήλους ἀδικεῖν ἐν τούτῳ τῷ χρόνῳ, μηδὲ χρηματίζειν, ὅτι ἂν μὴ περὶ τῆς ἑορτῆς ᾖ, κ. τ. λ.*[1] And I have remarked above, that to this circumstance is to be referred the passage of Æschines, where he brings an accusation against Demosthenes for

[8] Xenoph. de Rep. Ath. iii. 2. *δεῖ (τοὺς Ἀθηναίους) ἑορτάσαι ἑορτὰς, ὅσας οὐδεμία τῶν Ἑλληνίδων πόλεων. ἐν δὲ ταύταις ἧττόν τινα δυνατόν ἐστι διαπράττεσθαι τῶν τῆς πόλεως.* ib. 8. *καὶ ἄγουσι μὲν ἑορτὰς διπλασίους ἢ οἱ ἄλλοι.* Cf. Pausan. Attic. cap. 24. 3.

[9] Duker on Thucyd. iii. c. 56. *αἱ γὰρ ἑορτώδεις ἡμέραι ἱερομηνίαι καλοῦνται.* Schol. Demosth. p. 102. Reisk.

[1] Demosth. in Timocr. p. 709. To this custom I refer another passage in the same orator, de Fals. Leg. p. 399; *ἐκκλησίαν ποιῆσαι (δεῖ) ὅταν ἐκ τῶν νόμων καθήκῃ.*

having voted that an assembly should be held on the eighth day of Elaphebolion: *ὅτε ἦν τῷ Ἀσκληπιῷ ἡ θυσία, καὶ ὁ προαγὼν, ἐν τῇ ἱερᾷ ἡμέρᾳ, ὃ πρότερον οὐδεὶς μέμνηται γεγενημένον.* The following lines of Aristophanes allude also to the same:

νῦν οὔτε τὰ δικαστήρια
μέλλει δικάζειν, οὔτε βουλῆς ἔσθ' ἕδρα,
ἐπεὶ τρίτη 'στι Θεσμοφορίων ἡ μέση.

Now if the senate did not then sit, neither could an assembly be held, because without the senators it was informal and nothing could be done. All these feasts were therefore *ἄδικοι* and *ἄλογοι ἡμέραι*, as the character in Lucian[2], who pompously affects the old language, calls them. But there were also days called *ἀποφράδες*, or *unlucky*, on which no public business could be transacted; *ὅταν μήτε αἱ ἀρχαὶ χρηματίζωσι, μήτε εἰσαγώγιμοι αἱ δίκαι ὦσι, μήθ' ὅλως τι τῶν αἰσίων τελῆται, αὕτη ἀποφρὰς ἡμέρα*[3]. Such was the twenty-fifth day of Thargelion, on which the Plynteria were celebrated; whence *ἐν ταῖς μάλιστα τῶν ἀποφράδων τὴν ἡμέραν ταύτην ἄπρακτον Ἀθηναῖοι νομίζουσιν*[4]. Such too the etymologist tells us were *τὴν τετράδα*, [51] *τρίτην, δευτέραν φθίνοντος* in every month[5]; days on which they considered it unlucky to transact any business, and on which therefore the ordinary assemblies do not seem to have been held. If we have notice of any meetings on these days[6], we must consider them as extraordinary, and convened on account of some very important circumstance. Lastly, Hesychius

[2] Lexiphan. vol. v. p. 188. Bipont. Thus also the festival of the Panathenæa is called *ἄδικος ἡμέρα* by a solecist in Athenæus, iii. 20. p. 382. Schweigh.

[3] Lucian, Pseudologist. c. 13. vol. viii. p. 69. Bip.

[4] Plutarch, Alcib. c. 34.

[5] Etym. Mag. 131. 13.

[6] As in Æschines Adv. Ctesiph. p. 420. *Θαργηλιῶνος μηνὸς δευτέρᾳ φθίνοντος*; and Demosthenes, de Fals. Leg. p. 259. *Σκιρροφοριῶνος τετράδι φθίνοντος*. That this which Demosthenes mentions was an extraordinary one is clear from the very fact of its being held in the Piræus.

mentions seven other *ἀποφράδες*, during which offerings were brought to the dead.

I believe that no one will entertain any longer the idea that there were certain fixed periodical days of assembly, after he has read the arguments against it which I have adduced in this chapter[7].

CHAPTER III.

On the Places of holding the Assemblies.

[52] We are informed by Harpocration, that the Athenians anciently held their assemblies in the Agora. He tells us that Venus, whose temple stood near to the ancient Agora, was called *πάνδημος, διὰ τὸ ἐνταῦθα πάντα τὸν δῆμον συνάγεσθαι τὸ παλαιὸν ἐν ταῖς ἐκκλησίαις, ἃς ἐκάλουν ἀγοράς*[1]. From what source he derived his information I do not know; unless he conjectured it from the fact that Homer represents all the popular assemblies as being held in the Agora: and certainly that the same custom prevailed then at Athens is not improbable.

[7] In Theophrastus, Charact. vii. 3; in the description of loquacity, Fischer and Ast understand the words *καὶ πυθόμενος τὰς ἐκκλησίας ἀπαγγέλλειν*, to mean "to tell others what has been decreed at the assembly." But surely it would be strange for a citizen of Attica, such as Theophrastus describes, to inquire (*πυνθάνεσθαι*) from others the result of an assembly at which he ought to have been himself present; and besides this, *πυνθάνεσθαι τὰς ἐκκλησίας* could not mean "to enquire what has been passed at the assembly, (which would have been *τὰ τῆς ἐκκλησίας*, as Nast has well remarked) but "to inquire when the assemblies were to be held." It is not necessary to suppose that the extraordinary assemblies alone are meant, (as Schneider imagines, who probably thought the times for holding the ordinary ones were defined and settled, and that *πυνθάνεσθαι* could not therefore be applied to them,) but assemblies in general, whether ordinary or not. Had Theophrastus meant either one or the other alone, he would have added something to distinguish them. The folly of the talkative man consists in being so careful to tell others what they knew, or shortly would know, just as well themselves, either from a proclamation or public notice.

[1] Harpocration in v. *Πάνδημος Ἀφροδίτη*. See also Suidas.

Afterwards, however, the assemblies were transferred from thence to the Pnyx, and ultimately to the theatre, and several other places. Petit is evidently wrong in supposing[2] that the Pnyx was the same as the *ἀρχαία ἀγορά* mentioned by Harprocration, merely because both were near the Acropolis. Of all the writers who have treated of the Pnyx, not one has made any mention of the latter name: nor is it easily credible that Harpocration should have used an obsolete and almost unknown term, instead of the one commonly in vogue. We learn too from Pausanias, that the temple of Venus Pandemus was situated between the theatre and Acropolis, towards the south side of the latter[3]. Now the Pnyx lay westward.

The assertion of the grammarians, that in later times the people assembled in the Pnyx only for the purpose of creating magistrates, [53] but on all other occasions in the theatre[4], does not apply to the time of which we are now treating. For we know from Thucydides that in the time of the Peloponnesian war the Pnyx was the usual place of assembly. He says: *ἐκκλησίαν συνέλεγον εἰς τὴν Πνύκα καλουμένην, οὗπερ καὶ ἄλλοτε εἰώθεσαν*[5]. And Aristophanes, whenever he mentions the assemblies, speaks always of the Pnyx[6]. In the Knights he makes his *Demus* to exclaim

> *οὐκ ἂν καθιζοίμην ἐν ἄλλῳ χωρίῳ.*
> *ἀλλ' ὡς τὸ πρόσθε, χρὴ παρεῖναι 's τὴν πνύκα.*

[2] Lib. iii. 2. p. 303.

[3] Pausan. Att. See Barthelem. It. Anachars. ii. p. 342 and 227.

[4] Pollux viii, 133. Hesych. in v. *πνύξ*: *τόπος Ἀθήνησιν, ἐν ᾧ αἱ ἐκκλησίαι ἤγοντο πάλαι μὲν πᾶσαι, νυνὶ δὲ ἅπαξ, ὅταν στρατηγὸν χειροτονῶσιν.* This is probably to be understood of those times when a chief magistrate, under the name of Strategus, was at the head of the whole administration. See Meurs. de Archontt. i. 9. Although that officer was frequently nominated not by the people, but by the Roman Emperors. I confess I do not understand the gloss of Timæus (Lex. Plat. in v. *πνύξ*,) *χωρίον ἐν ᾧ τὰ ἀπόῤῥητα ἐκκλησίαζουσιν*,—nor the meaning of the expression *τὰ ἀπόῤῥητα*.

[5] Lib. viii. c. 97.

[6] Acharn. 20. Vesp. 31. Eccles. 283, 684.

In the same play he calls that character *Δῆμος πυκνίτης*[7], as if he were speaking of an Athenian citizen particularized by his own name and that of his ward; the name *Demus* having been not uncommon at Athens, as is well known, if only from the instance of the son of Pyrilampes[8] in Plato. But the fact is, the Poet has supposed the *Pnyx* to be a demus merely in joke, and it has long ago been shewn that those who have imagined it to be really one of the demi of Attica, are in error. Lucian has imitated this piece of Aristophanic wit in his Necyomantia; in which one *Κρανίων Σκελετίωνος Νεκυσιεὺς, φυλῆς Ἀλιβαντίδος* is introduced[9] [54]. The Pnyx, in the time of Aristophanes, was so notoriously the regular and authorized place of assembly, that he calls the Temple of Ceres and Proserpine, *the Pnyx*[1], because the women are represented as holding their meeting in it. We find mention made in Æschines of the assemblies being held in the Pnyx; and similarly in Demosthenes *de Corona*[2] the words *πᾶς ὁ δῆμος ἄνω καθῆτο* are to be understood of the meeting in the Pnyx[3].

The Pnyx was situated on a slope connected with Mount Lycabettus. It was in form semicircular, about 875 feet in circuit, and flanked on the southern side by a massive wall, built of large hewn stones. Towards the north it was also filled up and paved with large stones, in order to bring the sloping ground in that part to a level with the rest. From this peculiar feature the grammarians deduce its name *Pnyx: παρὰ τὴν τῶν λίθων πυκνότητα*[4]. [55] Towards the northern side, close to

[7] Equit. 750, 42.

[8] See also Lys. or. de Aristoph. Bonis, p. 628. and Brunck on Aristoph. Vesp. 98.

[9] Vol. iii. p. 26. Bipont.

[1] Thesmoph. v. 658.

[2] Æschin. adv. Ctesiph. p. 427. Demosth. de Coron. p. 244 and 285.

[3] The expression *ἀναβαίνειν εἰς τὴν ἐκκλησίαν* is of frequent occurrence. Demosth. Or. i. adv. Aristogit. p. 772. and 775. Procem. n. 5. p. 1422. n. 11. p. 1427.

[4] Suidas in v. where see the commentators. This appears to me a truer derivation of the word than that which some of the grammarians propose:

the wall, was a platform, *τὸ βῆμα*, ten or eleven feet in height, with an ascent of eight steps. It was cut out of the solid rock, which in that part juts out into the area. Hence it is frequently called by Aristophanes *λίθος*, as in the *Peace*[5], 680,

ὅστις κρατεῖ νῦν τοῦ λίθου τοὖν τῇ πυκνί.

As the bema is now situated, the sea cannot be seen from it: from which circumstance one would be inclined to conjecture with Chateaubriant that the present is the one which the thirty tyrants built in place of the former, from which the sea was visible, on purpose to exclude it from view; *οἰόμενοι* (as Plutarch, who tells this story, writes) *τὴν μὲν κατὰ θάλασσαν ἀρχὴν γένεσιν εἶναι δημοκρατίας, ὀλιγαρχίᾳ δ' ἧττον δυσχεραίνειν τοὺς γεωργοῦντας*[6].

Towards the extremity of the Pnyx, on each side, there were stone seats[7]; at the middle there were, perhaps, wooden ones. That some were of stone is certain from Aristophanes;

ἐπὶ ταῖσι πέτραις οὐ φροντίζει σκληρῶς σε καθήμενον οὕτως[8].

ἀπὸ τοῦ πυκνοῦσθαι τοὺς ἄνδρας ἐν τῇ ἐκκλησίᾳ. See Schol. ad Aristoph. Acharn. 20, and ad Equit. 47; Etymol. Mag. 677. 45, and others. The latter, however, has been lately adopted by some learned men. The word *πυκνοῦσθαι* is used in the best authors in the sense of *to be paved or covered.* Plutarch. C. Gracch. c. 7. I have compiled as accurate an account as I could of the Pnyx from the books to which I had access: Barthelemy's Anacharsis, ii. p. 345. Wheler's Tour, (French Translation,) p. 451, who however has taken for the Odeum the place which Chandler and most others have conceived to be the Pnyx. Chateaubriant's Journal, (German Translation,) i. 116. and 125. Barthold, Neuer Teutscher Mercur. ann. 1806. no. 9.—Those who are provided with better resources than I am able to consult (some of which have been very lately published) may easily correct and enlarge my observations on this subject. It might be worth while to investigate more satisfactorily the grounds of Böttiger's doubt (N. Deutsch. Mercur. p. 11,) whether the place now generally considered the Pnyx was really so or not.

[5] Compare Eccles. v. 85.

[6] Vit. Themistocl. c. 19.

[7] Wheler, p. 452.

[8] Equit. 783.

And that there were others of wood may be inferred from the same poet. [56].

> εἶτα δ' ὠστιοῦνται, πῶς δοκεῖς ;
> ἐλθόντες ἀλλήλοισι περὶ πρώτου ξύλου[9].

Pollux too, speaking of the Pnyx, asserts the same: ἐκάλουν δὲ τὴν προεδρίαν καὶ πρῶτον ξύλον.

After the great theatre of Bacchus was built, which was better adapted for the reception of a large multitude, and for seeing and hearing what was going on, the assemblies were frequently held in it. In some particular cases, it was provided by law that the people should meet there; as, for instance, after the feast of Bacchus, on the day following the Pandia, the people were to consult in the temple of Bacchus on subjects relative to the festival. Demosthenes adduces this law[1]: τοὺς Πρυτάνεις ποιεῖν ἐκκλησίαν ἐν Διονύσου τῇ ὑστεραίᾳ τῶν Πανδίων. ἐν δὲ ταύτῃ χρηματίζειν πρῶτον μὲν περὶ ἱερῶν, ἔπειτα τὰς προβολὰς παραδιδότωσαν τὰς γεγενημένας ἕνεκα τῆς πομπῆς κ. τ. λ. Æschines also, in the Oration *De Falsâ Legatione*, speaks of these assemblies being held in the theatre after the festival of the city Dionysia[2].

There were many other places of holding extraordinary assemblies. Οὐ μόνον, (says Ulpian[3],) ἐν Πυνκὶ ἐκκλησίαζον ἀλλὰ πολλάκις ἐν Πειραεῖ καὶ ἐν ἄλλοις τόποις· καὶ λοιπὸν, ὅπου συνήγοντο, ἐκκλησία ἐκαλεῖτο. And the very passage of Demosthenes, which gives occasion to this remark of Ulpian's, proves that they did sometimes assemble in the Piræus. Now there were in the Piræus two market-places and a theatre[4], which might have served for the reception of the people; [57]

[9] Acharn. 24.

[1] Contr. Mid. p. 517. (Spald. 6.)

[2] P. 241. τοὺς πρυτάνεις μετὰ τὰ Διονύσια τὰ ἐν ἄστει καὶ τὴν ἐν Διονύσου ἐκκλησίαν, προγράψαι δύο ἐκκλησίας. The Pandia were held on the fourteenth of Elaphebolion: this assembly therefore was held on the sixteenth.

[3] On Demosth. de Fals. Leg. p. 227. Benen. See Demosthenes, p. 359, and 379. R.

[4] See Meurs. Piræeus, c. 5, and 6.

though we are not informed exactly in what part of it the assemblies were held. The opinion of Biagi, that they met in the Hippodamian Forum, is solely conjectural[5].

That the assemblies were sometimes also held in the theatre at Munychia is certain from Thucydides and Lysias[6]; the former of whom speaks also of Colonus, a place sacred to Neptune, about a mile from Athens.

The term applied to holding assemblies out of the usual places, was *ἐξεκκλησιάζειν*, as we learn from the Scholiast on Thucydides[7]; although the word is sometimes used simply for *ἐκκλησιάζειν*[8].

[5] De Decret. Athen. c. xv. §. 11.

[6] Lys. contr. Agorat. p. 464. R. *ἐπειδὴ δὲ ἡ ἐκκλησία Μουνυχιάσιν ἐν τῷ θεάτρῳ ἐγίγνετο*: and nearly the same words occur again, p. 479. Thucyd. viii. 93. *ἐς τὸ πρὸς τῇ Μουνυχίᾳ Διονυσιακὸν θέατρον ἐλθόντες, ἐξεκκλησίασαν, κ. τ. λ.* The very best MSS. add after *Διονυσιακὸν* the words *τὸ ἐν Πειραιεῖ θέατρον*, which might be defended, if we were certain that this theatre which Thucydides mentions was the same as that in the Piræus, to which we have just alluded. This is the opinion of Spanheim ad Arg. Arist. Ran. p. 14. Beck.; but, as I think, without sufficient grounds. Biagi is evidently wrong in supposing that whenever mention is made of assemblies *ἐν Διονύσου*, this theatre at Munychia is meant; for the other was in the city, as every one knows. (De Decret. Ath. xv. §. 10.) Duker also, on the passage of Thucydides quoted above, wrongly refers to Pollux, viii. 133, where the theatre in the city, and not that at Munychia, is to be understood. The former, and no other, is commonly called simply *τὸ Διονύσ. θέατρον*.

[7] Ad lib. viii. 93.

[8] Lys. adv. Agorat. p. 136. Steph. *οὕτω μέντοι οὗτος πολὺ ὑμῶν καταφρονεῖ, ὥστε οὐκ ὢν Ἀθηναῖος, καὶ ἐδίκαζε καὶ ἐξεκκλησίαζε, κ. τ. λ.* See the author of the Œconomica, commonly attributed to Aristotle, ii. 13. *Μαύσωλος δεηθεὶς χρημάτων, ἐξεκκλησιάσας τοῖς Μυλασσεῦσιν ἔλεγεν, κ. τ. λ.* where it means *to harangue in the assembly*: the sense which Hesychius attributes to the simple word *ἐκκλησιάζειν*.

CHAPTER IV.

By whose authority, and in what manner, the people were convened.

[58] The right of convening the people was vested in the Prytanes. In any sudden emergency, requiring an extraordinary assembly, the Strategi had also this power. The former, as we are informed by Pollux and Harpocration, held an assembly four times in each Prytany[1]. And a notice[2] seems to have been previously set forth by them, specifying the day on which it would be held, and what subjects would be brought before the people for consideration. Besides this, on the day of the meeting a crier appears to have been sent round to collect the citizens. Hence the Prytanes are said by Harpocration, *προγράφειν τὴν ἐκκλησίαν*, i. e. *συνάγειν τὸν δῆμον*, as he himself in another place, and Pollux, express it. The former phrase is found occasionally in other authors; as Æschines, *προγράψαι τοὺς πρυτάνεις ἐκκλησίας δύο κατὰ τοὺς νόμους*[3]: from the last words of which we learn that this custom of giving a previous notice was the authorized and legitimate one[4]. We find too the expression, *προτιθέναι ἐκκλησίαν*, as in Libanius, *κλαίω μὲν ὅταν οἱ πρυτάνεις προθῶσιν* [59] *ἐκκλησίας*[5]: but by far the most common term was *ποιεῖν ἐκ-*

[1] Pollux, viii. 95. Harpocrat. in v. *κυρία ἐκκλησία.*

[2] This notice appears to have been given five days previously, if we can trust the assertion of the unknown author of the Lexicon Rhetoricum, in Bekker's Anecdota, i. p. 296. *Πρόπεμπτα: τὸ πρὸ πέντε ἡμερῶν τῆς ἐκκλησίας προγράφειν ὅτι ἔσται ἐκκλησία. εἰ τύχοι, εἰ ἔδει γενέσθαι ἐκκλησίαν τῇ δεκάτῃ, προέγραφον οἱ πρυτάνεις ἀπὸ τῆς πέμπτης, ὅτι ἔσται.*

[3] Æschin. de Fals. Leg. p. 240.

[4] To this the words of Pollux, quoted above, refer; where he tells us that it was the duty of the Prytanes *προγράφειν πρὸ τῆς βουλῆς καὶ πρὸ τῆς ἐκκλησίας, περὶ ὧν δεῖ χρηματίζειν.*

[5] Liban. Declam. xvi. p. 466. B. See Hemsterhus. ad Lucian. Necyomant. vol. iii. p. 361. Bip.

κλησίαν[6]. We learn from Ulpian and others, that this program was a tablet, on which was declared the business to be discussed at the ensuing assembly: ἐνέγραφον (says he) σανίδας τινὰς, τὸ πρᾶγμα ἐχούσας, περὶ οὗ ἡ σκέψις καὶ περὶ οὗ συνεληλύθασι. καὶ προυτίθεσαν τῆς ἐκκλησίας, ἵνα γνῶσι πάντες, περὶ τίνος ἐστὶν ἡ ἐκκλησία[7].

Petit, and several others after him, have conjectured from a passage in Aristophanes, that the people were convened by means of criers. In the Ecclesiazusæ of that author, one of the women who have assembled early in the morning to take a clandestine part in the assembly, says to her associates,

> ὥρα βαδίζειν, ὡς ὁ κήρυξ ἀρτίως,
> ἡμῶν προσιόντων, δεύτερον κεκόκκυκεν[8].

Here Petit supposes the real crier to be meant. "Præconis voce," (he says,) "calabatur populus, idque trinâ, nisi valdè fallor, calatione[9]." If his supposition be correct, Aristophanes applies the word κοκκύζειν to the crier, by a joke similar to that used by Demades, who, as Athenæus tells us, called τὸν σαλπιγκτὴν κοινὸν Ἀθηναίων ἀλέκτορα[1]. Brunck, however, both here and in v. 739. [60],

> —— σὺ δὲ δεῦρ', ἡ κιθαρῳδὸς, ἔξιθι,
> πολλάκις ἀναστήσασά μ' εἰς ἐκκλησίαν
> ἀωρὶ νυκτῶν διὰ τὸν ὄρθριον νόμον,

supposes that a cock is meant; and this I think the cor-

[6] Æschin. adv. Ctesiph. p. 430. Demosth. contr. Mid. p. 517. adv. Timocr. p. 706.

[7] Ulpian. ad Phil. i. p. 33. C. and ad Or. de Fals. Leg. p. 107. B. Schol. ad Æschin. Or. de Fals. Leg. p. 241. R. See Taylor on Demosth. d. f. l. p. 399. (426.) Perhaps also, if any proposal of the senate had to be presented to the people in assembly, it was notified some time before together with the program.

[8] Aristoph. Eccles. v. 30.

[9] Leg. Att. iii. 1. p. 287.

[1] Athenæus, iii. 21. p. 387. Schweig.

rect explanation[2]. And yet, even without the express testimony of the ancients, it is in itself highly probable that the people were convened by a proclamation, if not to the ordinary (for which a notice of a few days previous might have been sufficient), at least to the extraordinary assemblies. For in this latter case no notice (or one only very shortly beforehand) could be given—indeed, for that very reason they were called *σύγκλητοι*. And this is the opinion of Ulpian: *σύγκλητος ἐκκλησία ἐκλήθη, ἐπειδὴ ἐν μὲν ταῖς νομίμοις καὶ συνήθεσιν ἀφ' ἑαυτοῦ ὁ δῆμος συνέτρεχεν, ὅταν δὲ ἐξ ἀνάγκης τινὸς σύλλογος γένηται, συνεκάλουν τινὲς περιιόντες*[3]. In regard to his statement, that the people came spontaneously to the ordinary assemblies, this can only be true, if we suppose a notice to have been previously set forth. For the people could have had no other way of knowing, since, (as I hope I have before proved) there were no fixed days in the Prytany for the assemblies. We must not omit to add, that not only the citizens resident at Athens, but those also in the country, were usually convened to these *σύγκλητοι ἐκκλησίαι*, which were in that case called *κατεκκλησίαι*[4].

[61] These extraordinary meetings, which were very frequent in times of war or commotion[5], were generally convened and held by the Strategi, who were usually mentioned at the head of the decrees either by themselves or in conjunction with the Prytanes: whence we have good grounds for supposing that the consent of the Prytanes and senate was requisite. Instances of this will be

[2] An objection may possibly be raised against this use of the verb *κοκκύζειν*, which Hesychius (in v. ἄδειν) tells us was not applied to the crowing of cocks; *Ἄιδειν ἐπὶ τῶν ἀλεκτρυόνων λέγουσιν Ἀττικοί· κοκκύζειν δὲ οὐ φασὶν ἐπ' αὐτῶν, πλὴν μωκώμενοί τινα ξένον.* But this distinction, especially in the above passage of Aristophanes, does not seem deserving of much consideration.

[3] Ad Dem. de Fals. Leg. p. 100. A.

[4] See above, chap. i. Valckenaer rightly distinguishes *σύγκλητος ἐκκλησία* from *κατακλησία*, which Pollux has confounded, probably because most *σύγκλητοι ἐκκλησίαι* were also *κατακλησίαι*.

[5] Æschin. de Fals. Leg. p. 251: *πλείους δὲ ἐκκλησίας συγκλήτους ἠναγκάζεσθε ἐκκλησιάζειν μετὰ φόβου καὶ θορύβου, ἢ τὰς τεταγμένας ἐκ τῶν νόμων.*

found in Demosthenes *de Coron.* p. 238; *Ἐπὶ Μνησιφίλου ἄρχοντος, συγκλήτου ἐκκλησίας ὑπὸ στρατηγῶν γενομένης, πρυτανέων καὶ βουλῆς γνώμῃ*, where the last words distinctly intimate the consent of the Prytanes and senate[6].

Again; *de Coron.* p. 249; *Ἐπὶ ἄρχοντος Νεοκλέους, μηνὸς βοηδρομιῶνος, ἐκκλησίας συγκλήτου ὑπὸ στρατηγῶν συναχθείσης, Εὔβουλος Μνησιθέου Κύπριος (Κυθήριος) εἶπεν.*

In the formula of a truce in Thucydides, ratified between Athens and Sparta, it is agreed, that an assembly be held by the Prytanes and Strategi, to discuss the propriety of making peace[7]. Hence we may understand, why Thucydides, when he speaks of the people having been convened by Pericles, adds *ἔτι δ' ἐστρατήγει*: viz. to shew his authority and right to convene them[8]. We may infer from the same author, that the Strategi had likewise the power to stop any assembly from being held. [62] He informs us that Pericles, seeing the citizens disposed to rash and pernicious measures, declined to convene an assembly, lest they should determine upon injudicious and dangerous resolutions[9]. We must not, however, forget that all these instances refer to times of war and trouble; and it appears that upon no other occasion whatever the people could be convened by the Strategi, but only by the Prytanes.

Petit infers from a decree in Demosthenes, that the Polemarch had the power of convening the people. The decree begins thus:

Ἐπὶ ἄρχοντος Ἡροπύθου, μηνὸς Μουνυχιῶνος ἕνῃ καὶ νέᾳ, πολεμάρχου γνώμῃ[1].

The two last words, however, do not prove that the assembly was held by order of the Polemarch, but that the

[6] The same formula, but differently arranged, is sometimes found in decrees; the reason of which we shall explain hereafter. The common reading in Demosthenes is *καὶ πρυτανέων καὶ β. γν.*; but as the former *καὶ* is not found in some MSS. I have omitted it.

[7] Thucyd. iv. 118; see also the Scholiast on iii. 36.

[8] Thucyd. ii. 59. [9] Ibid. ii. 22.

[1] De Coron. p. 282; Petit, iii. 1. p. 286.

subjects there proposed to the people were proposed by his authority.

It appears, then, that no magistrate had any right to convene the people, except the Prytanes and the Strategi. This limitation, however, must be understood to refer only to the age after Solon: for before his time there can be no doubt that it was the office of the Archons; since, as Thucydides tells us, they had then the chief management of the state[2].

The same custom which Aristotle[3] informs us was prevalent in some states, namely the imposition of a fine on all who refused to attend the assembly, prevailed also at Athens. For this purpose there were certain magistrates, six in number, appointed, called Lexiarchs[4], whose duty it was to see that the people duly attended, and to fine the recusants. [63] We have an accurate account of the means by which this was effected, from the Scholiast on Aristophanes[5]. As the Athenians were much in the

[2] Thuc. i. 126; *τότε δὲ τὰ πολλὰ τῶν πολιτικῶν οἱ ἐννέα ἄρχοντες ἔπρασσον.*

[3] Aristot. Polit. iv. 13.

[4] Pollux. viii. 104; *Οἱ Ληξιάρχοι—τοὺς μὴ ἐκκλησιάζοντας ἐζημίουν—καὶ σχοινίον μιλτώσαντες, διὰ τῶν τοξοτῶν συνήλαυνον τοὺς ἐκ τῆς ἀγορᾶς εἰς τὴν ἐκκλησίαν.* From Pollux we should correct the Scholiast on Æschines (adv. Timarch. p. 44. 1.) who has copied him, and who says of the Lexiarchs, *ἦσαν δὲ ἑξῆς οἱ τοὺς ἐκκλησιάζοντας ἐζημιοῦν.* In this corrupt passage Reiske has most properly restored *ἕξ* for *ἑξῆς*: but had he recollected the above quotation from Pollux he would have spared us his conjectures on what follows, *τοὺς παρεκκλησιάζοντας* (a word totally destitute of authority) or *τοὺς οὐκ ἔξον ἐκκλησιάζοντας.* The true reading is unquestionably *τοὺς μὴ ἐκκλησιάζοντας.*

[5] Ad Acharn. v. 22; *ὑπὲρ τοῦ ἐξ ἀνάγκης αὐτοὺς εἰς τὰς ἐκκλησίας συνιέναι, τοιοῦτο ἐμηχανῶντο καὶ πολλὰ ἄλλα. Ἀνεπετάνυσαν γὰρ τὰ γέρρα, καὶ ἀπέκλειον τὰς ὁδοὺς τὰς μὴ φερούσας εἰς τὴν ἐκκλησίαν· καὶ τὰ ὤνια ἀνῄρουν ἐν ταῖς ἀγοραῖς, ὅπως μὴ περὶ ταῦτα διατρίβοιεν· ἔτι μὴν καὶ μεμιλτωμένῳ σχοινίῳ περιβάλλοντες αὐτοὺς, συνηλαυνον εἰς τὰς ἐκκλησίας.* Another Scholium informs us that *δύο ὑπηρέται εἰώθεσαν μεμιλτωμένον σχοινίον ἐκτείνοντες διὰ τῆς ἀγορᾶς διώκειν τὸν ὄχλον εἰς τὴν ἐκκλησίαν. ὅσοι δὲ ἐχρίοντο, ἐξέτινον ζημίαν.* See Suidas in v. *σχοινίον* and *μεμιλτωμένον.* Bergler is not quite correct in his note on Alciphron. ii. 3, tom. i. p. 316. Wagn: "Erat et aliud *περισχοίνισμα*, cum populus in concionem coactus circumdabatur fune miniato, ne antè tempus dilaberetur. Quæ res sæpe risum excitabat: nam qui vellent se subducere, maculabantur."

habit of frequenting the forum and other public places, for the purpose either of transacting business or indulging in conversation, and were likely from this cause to come too late, or not at all, to the assembly, it was ordered that on the day when it was held all merchandize should be re-removed from the forum. Certain public slaves, (called *Σκύθαι*, from their nation, or *τοξόται*, from the bows with which they were armed, or Speusini, from one Speusinus a citizen, the author of their appointment[6],) [64] went round the various knots of idlers with a rope stained with vermilion, and drove them towards the assembly. Thus all who refused to go were marked by the rope and fined by the Lexiarchs. To prevent them from slipping aside and avoiding the assembly, all the ways except those leading to the Pnyx were blocked up with hurdles, *γέρρα*, which hindered their escape.

Aristophanes more than once makes mention of this rope: as in the Acharnians, v. 22.

> *οἱ δ' ἐν ἀγορᾷ λαλοῦσι, κἄνω καὶ κάτω*
> *τὸ σχοινίον φεύγουσι τὸ μεμιλτωμένον.*

And again in the Ecclesiazusæ:

> *καὶ δῆτα πολὺν ἡ μίλτος, ὦ Ζεῦ φίλτατε,*
> *γέλων πάρεσχεν, ἣν προσέρραινον κύκλῳ.*

The place where the assembly was held seems also to have been stopped in the same way, after the business of the meeting had commenced, to prevent the intrusion of those who had no vote. This furnishes an explanation to a passage in Demosthenes, in his oration against Neæra, p. 1375; *τοὺς δὲ πρυτάνεις κελεύει τιθέναι τοὺς καδίσκους ὁ νόμος, καὶ τὴν ψῆφον διδόναι προσιόντι τῷ δήμῳ, πρὶν τοὺς ξένους εἰσιέναι, καὶ τὰ γέρρα ἀναιρεῖν*: i. e. before the hurdles were removed, at the conclusion of the discussions and the *τἀπόρρητα*, to admit any strangers who might be desirous of appealing to the people[7].

[6] The subject of these *τοξόται* is well known. See Andocid. de Pace, p. 92. R.; Æschin. de Fals. Leg. p. 335; Pollux, viii. 132. and Jungermann.

[7] These *γέρρα* must not be confounded with those mentioned de Coron. p. 284; *ἑσπέρα μὲν γὰρ ἦν, ἦκε δ' ἀγγέλλων τις ὡς τοὺς πρυτάνεις, ὡς Ἐλάτεια*

CHAPTER V.

On the Pay given for Attendance at the Assemblies.

[65] One of the public largesses first introduced by Pericles, was a sum of money given to each of the poorer citizens for their attendance at the assembly. The object of this was to hold out a stronger inducement to them to take a part in public affairs; the importance of which in strengthening the democracy has been shewn above. Writers are not agreed who was the originator of this custom. Some assert that it was Agyrrhius of Collytus, who was a great popular favourite about Ol. xcii—xcviii[1]. Others attribute the institution of it to one Callistratus, surnamed Parnytes, and unknown to us on any other grounds[2]. The claims of Agyrrhius are founded on the statement of the Scholiast [66] on Aristophanes, Eccles.

κατείληπται. καὶ μετὰ ταῦτα οἱ μὲν εὐθὺς ἐξαναστάντες μεταξὺ δειπνοῦντες, τούς τ' ἐκ τῶν σκηνῶν τῶν κατὰ τὴν ἀγορὰν ἐξεῖργον, καὶ τὰ γέρρα ἐνεπίμπρασαν. In this passage we must understand with Harpocration (whom Suidas has copied) the word γέρρα to mean τὰ τῶν σκηνῶν σκεπάσματα καὶ παρακαλύμματα, which were set on fire in the disturbance, to clear the forum. On the signification of this word the reader may further consult Stephan. Append. ad Thesaur. Col. 676; and Taylor ad Demosth. in Neær. p. 1375.

[1] Mention is made of this man more than once in Aristophanes, Plut. 176; Eccles. 102; and Ran. 367; though in the latter passage the name is suppressed: see Brunck in loc. Demosthenes also speaks of him, in Timocr. p. 742; ἔπειτα Ἀγύρριον τὸν Κολλυτέα ἄνδρα χρηστὸν καὶ δημοτικὸν καὶ περὶ τὸ πλῆθος τὸ ὑμέτερον πολλὰ σπουδάσαντα. Xenophon, Hellen. iv. 8. 31; and Diodorus, xiv. 99, state that he succeeded Thrasybulus in the command of Lesbos: an event which took place Ol. xcvii. 3. He is called by the Schol. on Aristophanes, Eccles. 102, Στρατηγὸς, but with the qualifying epithet of θηλυδριώδης. Andocides also (de Myster. p. 17, Steph.) speaks of one Agyrrhius, for so we should read for Argyrius, as the commentators have already perceived. Whether this person, however, or some other of that name, is meant, remains uncertain. See Vales. ad Harpocr. p. 2; and ad Maussac. p. 209; Meurs. Lectt. Att. vi. 4; Ducker, ad Arist. Plut. 176; Corsin. Fast. Att. Diss. vii; Harpocration (in v. θεωρικά) states that Agyrrhius was also the author of the distribution of the Theorica; on which subject, see the opinion of Boeckh. Publ. Econ. of Athens, i. p. 292. (Eng. Transl.)

[2] See Boeckh. just quoted, p. 294. 298. (Eng. Transl.)

102; *τὸν μισθὸν τῶν ποιητῶν συνέτεμε, καὶ πρῶτος ἐκκλησιαστικὸν δέδωκεν*, for so this pay was called.

In the Vatican Appendix to the Proverbs[3], we find this information respecting Callistratus; *Ὀβολὸν εὗρε Παρνύτης: Καλλίστρατος Ἀθήνῃσι πολιτευσάμενος, ἐπικαλούμενος Παρνύτης, μισθὸν ἔταξε τοῖς δικασταῖς καὶ τοῖς ἐκκλησιασταῖς.* The assertion that Callistratus was the author of the Dicast's Pay, is unquestionably false. For Aristotle, a writer of infinitely higher authority, tells us that it was first instituted by Pericles[4]. On the subject, however, of the *ἐκκλησιαστικὸν*, the statement of the unknown collector of these proverbs may be reconciled with that of the Scholiast on Aristophanes, by the supposition that it was originally founded by Callistratus, and afterwards increased by Agyrrhius. For Aristophanes himself informs us that it was at first an Obol, and afterwards increased to a Triobol. In his Ecclesiazusæ[5] he makes the women thus speak:

ὅρα δ' ὅπως ὠθησομεν τούσδε τοὺς ἐξ ἄστεος
ἥκοντας, ὅσοι προτοῦ μὲν, ἡνίκ' ἐλθόντας ἔδει
λαβεῖν ὀβολὸν μόνον, καθῆντο λαλοῦντες·
νυνὶ δ' ἐνοχλοῦσ' ἄγαν.

νυνὶ (says he) *ἐνοχλοῦσ' ἄγαν*, that is, now that a triobol, instead of a single obol, is given. There is no doubt about the well known sum of the triobol. The following lines[6] from the same play, not to adduce other passages, are decisive:

B. *ἀτὰρ πόθεν ἥκεις ἑτεόν;* X. *ἐξ ἐκκλησίας.*
B. *τριώβολον δῆτ' ἔλαβες;* X. *εἰ γὰρ ὤφελον.*

[67] It appears from the former of these quotations that this increase of pay had not been introduced any length of time before this play was acted, which took

[3] In Petit, Legg. Att. iii. 1. p. 387.
[4] Aristot. Polit. ii. cap. 10.
[5] V. 300 seqq.
[6] V. 376 seqq.

place Ol. xcvii. 1 or 2[7]. From Callistratus being said in the collection of Proverbs to have "invented an obolus," it seems highly probable that the custom of giving one obol originated from him. Subsequently, when this sum was thought too small, Agyrrhius, about Ol. xcvii. proposed that it should be increased to a triobol: a measure which we find from many passages of Aristophanes was particularly acceptable to the people, and proved a great inducement to the poorer classes to attend the assemblies[8]. With the single exception of the passage of Aristophanes quoted above, no mention is anywhere made of the original sum, the obol. And this I take to be the reason that the Scholiast, having somewhere read that the triobol was first given by Agyrrhius, and being ignorant of any other pay except this having ever been given, was erroneously induced to ascribe to him the first and sole institution of it[9].

We need hardly observe, that only the poorer classes received the *ἐκκλησιαστικόν*. The richer citizens, who attended the assembly gratis, are called by the Poet Antiphanes *οἰκόσιτοι ἐκκλησιασταί*. In the passage of that author preserved by Athenæus[1].

ταχὺ γὰρ γίγνεται
κἀκκλη σιαστὴς οἰκόσιτος,

the word *οἰκόσιτος* is explained by the latter to signify, *ὁ μὴ μισθοῦ ἀλλὰ προῖκα τῇ πόλει ὑπηρετῶν*. The term is also applied [68] to any person whatever who does a thing gratis: as we find a little further on in Athenæus:

οἰκόσιτον νύμφιον,
οὐδὲν δεόμενον προικὸς, ἐξευρήκαμεν.

Some have thought that none but these who lived in the country, and had to come some distance to the as-

[7] See Mohnike. Gesch. d. Litt. d. Griech. u. Rom. i. p. 473.

[8] See Aristoph. Plut. v. 329. and 171. Eccles. 303, 380, 392, 547.

[9] I have followed Boeckh throughout the discussion of this subject, Publ. Econ. i. p. 307 seqq. (English translation.)

[1] Athen. vi. c. 52. p. 450. Schweigh.

sembly, received the pay[2]. This opinion, however, is erroneous, as may be proved at once from the lines of Aristophanes quoted above; Eccles. 300 seqq. *ὅρα δ' ὅπως ὠθήσομεν τούσδε τοὺς ἐξ ἄστεος, κ. τ. λ.* Those who attended the assembly, (as well as the Dicasts,) appear to have had a sort of ticket given to them; on the production of which, at the conclusion of the assembly, they received their pay. Those who came too late received neither the ticket, nor, consequently, the money[3], which was distributed by the Thesmothetæ.

There can be no reason to doubt that this custom continued even in the time of Demosthenes. *Πῶς οὐ δεινὸν*, says he[4], *εἰ διὰ τὸν νόμον, ὃν σὺ τέθεικας, μισθὸν λαβὼν, ἄμισθος ὁ δῆμος καὶ ἡ βουλὴ καὶ τὰ δικαστήρια ἔσται*; The term *ὁ δῆμος*, whenever it is opposed to the senate and courts, implies the people collected in assembly. [69] It appears then that they still received their pay[5].

It is a common error of the grammarians to confound the terms *ἐκκλησιαστικόν*, and *δικαστικόν*, or *ἡλιαστικόν*. Thus the Scholiast on the following line in the Nubes:

ὃν πρῶτον ὀβολὸν ἔλαβον ἡλιαστικόν,

observes, *ἡλιαστικόν, ἀντὶ τοῦ, ἐκκλησιαστικόν, οὐ γὰρ ἵστατο τῶν δικαστικῶν* (leg. *δικαστῶν*) *ὁ μισθός*. These words Petit has interpreted to imply, that the *ἐκκλησιαστικὸν*, and not the *δικαστικόν*, must be meant, be-

[2] Albert. Gerh. Becker. Demosthenes als Staatsmann. und Redner. tom. ii. p. 556.

[3] Aristoph. Eccles. v. 289 seqq.

χωρῶμεν εἰς ἐκκλησίαν, ὦνδρες· ἠπείλησε γὰρ
ὁ θεσμοθέτης, ὃς ἂν μὴ πρῷ πανὺ τοῦ κνέφους
ἥκῃ κεκονιμένος,—μὴ δώσειν τὸ τριώβολον.
ἀλλ', ὦ Χαριτιμίδη, καὶ Σμίκυθε, καὶ Δράκης,
ἕπου κατεπείγων σαυτὸν, προσέχων, ὅπως
——— *τὸ σύμβολον λαβόντες ἔπειτα πλήσιον καθεδούμεθα.*

I know not what *σύμβολον* can mean in this passage, except the ticket I have mentioned. It is a notorious fact that the Athenians made use of such tickets in the distribution of the dicast's pay.

[4] Or. adv. Timocrat. p. 731.

[5] On the pay of the senators, see Boeckh. Publ. Econ. i. p. 310. (English translation.)

cause at that time nothing was settled about the δικαστικόν. This is most erroneous. The intention of the grammarian was to explain how it happens that Aristophanes should call that an obol, which others call a triobol. "The fact is," says he, "the pay of the dicasts was not always the same, but different at different times." And this is asserted by Hesychius and the Scholiast on the Ranæ[6], v. 140. Spanheim has rightly explained the passage thus, though he too has fallen into the error of confounding the pay of the assemblies and of the courts. Ducker was the first who found a difficulty in the statement of the Scholiast on the Nubes, that ἡλιαστικὸν was put for ἐκκλησιαστικὸν, and proposed to read on that account δικαστικὸν for ἐκκλησιαστικόν. I confess I entertained the same opinion myself, until I observed the confusion frequently made by the grammarians between the courts and assemblies. Thus the Scholiast on the Acharnenses, v. 683, calls the Pnyx δικαστήριον; and Suidas explains the word πνὺξ by ἐν Ἀθήναις δικαστήριον οὕτως ἐκαλεῖτο. The Etymologist says: Ἡλιαία: ἡλιάσται λέγονται οἱ ἐκκλησιάζοντες: for δικάζοντες. Schol. Dorvil. [70] ad Arist. Plut. 171. ἐκκλησία· ἡ συνέλευσις κριτῶν[7]. A host of similar mistakes might be collected. The confusion is sometimes less palpable: as in a supposititious letter of Solon to Epimenides, in Diogenes Laertius, where the well known story of Pisistratus is related in these words: εἶτα δὲ ἑαυτῷ τραύματα ποιήσας, παρελθὼν ἔφ' ἡλιαίαν, ἐβόα, φάμενος πεπονθέναι ταῦτα ὑπὸ

[6] Boeckh. ut sup. p. 312.

[7] On the same verse of the Plutus, ἐκκλησία δ' οὐχὶ διὰ τοῦτον (τὸν Πλοῦτον) γίγνεται; another Scholiast remarks: ἵνα πόρον εὕρῃ χρημάτων· ἐκκλησιάζομεν γὰρ ἢ τῶν ἰδίων τι σῶσαι βουλόμενοι, ἢ τῶν ἀλλοτρίων σφετερίσασθαι. διαβάλλει δὲ τὸ ἐπὶ φιλονεικίᾳ (read φιλοδικίᾳ from Suidas in v. ἐκκλησία) τῶν Ἀθηναίων τριώβολον. There is much obscurity in these words, but their general import clearly shews that the Scholiast had in view the courts of law. To these his observation τῶν ἰδίων τι σῶσαι, and τῶν ἀλλοτρίων σφετερίσασθαι, applies. The word φιλοδικίᾳ also proves that such was his idea. Every one will at once see that Aristophanes alludes to the pay for attending the assemblies. The remark on v. 329 of the Plutus originated from the same confusion of the assemblies and the courts.

τῶν ἐχθρῶν· καὶ φύλακας ἠξίου παρασχεῖν οἱ τετρακοσίους, κ. τ. λ. Now it is most certain that the Ecclesia, and not the Heliæa, must be here meant: and Diodorus, in relating the same story, expressly says ἐκκλησίαν, for which Herodotus[8] used the word ἀγορήν. The origin of the error in these authors appears to have been this:— When Athens became subject to the Roman empire, and the inhabitants lost, with their freedom, all concern and share in the management of those affairs which used to be discussed by them, in the times of the free republic, at the assembly; nothing was left them but the law courts, of which accordingly a more frequent and extensive use was made than before. We will adduce an example in proof of this. There is extant an edict of Hadrian to the Athenians respecting the growers of the olive for making oil, and the buyers and sellers of that commodity. The growers are ordered to pay as tribute some a third, others an eighth part of the produce, and to state [71] how great a quantity they have grown, as well as how much, to whom, and into what country they have sold it. The buyers are likewise required to declare how much and from whom they have purchased: and the defaulters are condemned to pay a heavy fine. Then follow these words:—

ΤΑΣ ΔΕ ΠΕΡΙ ΤΟΥΤΩΝ ΔΙΚΑΣ
ΜΕΧΡΙ ΜΕΝ ΠΕΝΤΗΚΟΝΤΑ ΑΜΦΟΡΕΩΝ Η ΒΟΥ
ΑΗ ΜΟΝΗ ΚΡΕΙΝΕΤΩ ΤΑΣΔΕ ΥΠΕΡ ΤΟΥΤΟΥ ΜΕΤΑ
ΤΟΥ ΔΗΜΟΥ ΕΑΝ ΔΕ ΤΩΝ ΕΚ ΤΟΥ ΠΛΟΙΟΥ ΤΙΣ
ΜΗΝΥΣΗΙ ΕΠΑΝΑΓΚΕΣ Ο ΣΤΡΑΤΗΓΟΣ ΤΗ ΕΞΗΣ
ΗΜΕΡΑ ΒΟΥΛΗΝ ΑΘΡΟΙΣΑΤΩ ΕΙ Δ ΥΠΕΡ ΤΟΥΣ
ΠΕΝΤΗΚΟΝΤΑ ΑΜΦΟΡΕΙΣ ΕΙΗ ΤΟ ΜΗΝΥ
ΜΕΝΟΝ ΕΚΚΛΗΣΙΑΝ ΚΑΙ ΔΙΔΟΣΘΩ ΤΩ ΕΛΕΓ
ΞΑΝΤΙ ΤΟ ΗΜΙΣΥ ΕΑΝ ΔΕ ΕΚΚΑΛΕΣΗΤΑΙ ΤΙΣ
Η ΕΜΕ Η ΤΟΝ ΑΝΘΥΠΑΤΟΝ ΧΕΙΡΟΤΟΝΕΙΤΩ ΣΥΝ
ΔΙΚΟΥΣ Ο ΔΗΜΟΣ[9].

[8] Herod. i. c. 59. Diodor. xiii. c. 95.

[9] I have copied this inscription from Wheler's Tour, (French Translation, p. 470.) It is full of errors, some of which must certainly be attributed to

This proves that, at this period, those causes were tried in the senate or assembly, of which, in the time of the free republic, information was given to the magistrates by an indictment called *φάσις*, and the cognizance of them referred by the magistrates to the tribunal of 201 judges; or in greater cases, in which the sum exceeded 100 drachmæ, to that of 401 judges[1]. Now we may naturally infer, that the same change which was made in this description of causes, was made likewise in others: and this inference will explain the reason of the confusion made by the grammarians between the assemblies and courts. I have thought this subject deserving of particular consideration, because the real facts have escaped many of the most learned men, and given rise to not a few errors[2].

CHAPTER VI.

What Persons had the right of voting.

[72] In a popular constitution, like that which flourished at Athens after the times of Solon and Clisthenes, the rights of the state chiefly consist in permitting any citizen to hold its offices, to sit as judge in its courts, and to give a vote at its assemblies. And hence Aristotle[1] observes, *πολίτης ἁπλῶς οὐδενὶ τῶν ἄλλων ὁρίζεται μᾶλλον, ἢ τῷ μετέχειν κρίσεως καὶ ἀρχῆς*, where however the word *ἀρχῆς* must be understood in a more extended signification, to mean *the holding any public office whatever:*

Wheler or his French editor, and not to the stone-cutter; though it is nothing uncommon for the engraver of an inscription to commit mistakes. I have, however, corrected some few words. In v. 2. I have altered ΜΕΚΡΙ, in v. 3. ΚΡΕΙΝΕΤΟΤΑ, in v. 7. ΑΜΦΩΡΕΙΣ, in v. 8. ΕΛΕΚΞΑΝΤΙ, and in v. 9. ΕΚΚΛΕΣΗΤΑΙ.

[1] Pollux viii. 47, 48.

[2] See my remarks on *εἰσαγγελία* against the doctrine of Luzac, inf. lib. ii. chap. 3.

[1] Polit. iii. c. 1.

and in this sense the term *ἀρχὴ ἀόριστος* is applied by Aristotle a little further on to those who have the privilege of voting at the assemblies[2]. From this privilege, then, no Athenian, provided he was in full possession of the rights of the state, and of a lawful age, was excluded. All were reckoned *citizens*, whose parents were both such, or who had been presented with the freedom of the state, and enrolled in the register of some demus, or ward. We know at least, that in the Archonship of Euclides, Aristophon the orator brought in a law, that no one after that time should enjoy the rights of the state, unless he was *ἑκατέρωθεν πολίτης*; but that all who had been born before were to be considered genuine citizens though the father only had been one[3]. [73] Many of this latter description had insinuated themselves into the state before the time of Euclides[4], although Pericles had long ago introduced, and enforced with severity, a law similar to that of Aristophon[5].

Those who had been, at the instance of the people, presented with the freedom of the state, (*ποιητοὶ*, or *δημοποίητοι*,) were registered in the books of the tribes and

[2] Thus the judges are placed by Aristotle in the same passage among the *ἀρχαί*, and not unfrequently by others. Moreover ambassadors, scribes, and advocates are deemed *ἀρχαί*: many examples of which have been collected by Hudtwalker, in his excellent work *de Diætetis*, p. 32. On the subject of the judges see also Plato, who considers them in some respects *ἀρχαί*, in some not so, de Legg. vi. p. 767. a. 768. c.

[3] See Petit Leg. Att. lib. ii. tit. 4. p. 213—14. and Wesseling in loc.

[4] But Petit's assertion is undoubtedly false, "eratque satis *alterutrum* parentum civem esse." For we have no instance to shew, that a person was considered a citizen, whose mother was one, but his father an alien.

[5] Plutarch. Pericl. c. 37. Most writers, however, are of opinion that this law was abrogated not many years afterwards by Pericles himself; and among these is Perizon. ad Ælian. Var. Hist. vi. 10. This, however, appears to me to be false. For from Plutarch's words *συνεχώρησαν* (*τῷ Περικλεῖ*) *ἀπογράψασθαι τὸν νόθον εἰς τοὺς φράτορας*, this appears to have been a privilege granted to Pericles by the people; nor should any stress be laid on the preceding words: *ὄντος οὖν δεινοῦ, τὸν κατὰ τοσούτων ἰσχύσαντα νόμον ὑπ' αὐτοῦ πάλιν λυθῆναι τοῦ γράψαντος*. A similar law about bastards seems to have been before introduced by Solon (Petit, p. 215), but dropped after his time, as the history of Themistocles alone shews.

demi, and enjoyed equal rights with the rest of the citizens, with the exception of their inability to hold the offices of Archon and Priest[6].

When we speak of those who enjoy the full rights of the state, we mean all who are *ἐπίτιμοι*, that is, deprived of no portion of those rights by degradation or infamy, which the Greeks called *ἀτιμία*. Of this there were several kinds. The most severe was when a man was thereby deprived of all protection of the law, and liable to be slain with impunity, by any one who pleased[7]. There is less frequent mention made of this description [74] of *ἀτιμία* among ancient authors; but we read in Demosthenes that Arthmius the Zelite, (mentioned also by Æschines and Dinarchus[8],) was made *ἄτιμον, οὐχ ἣν ἂν οὑτωσί τις φήσειεν ἀτιμίαν——ἀλλ' ἐν τοῖς φονικοῖς γέγραπται νόμοις, ὑπὲρ ὧν ἂν μὴ διδῷ φόνου δικάσασθαι, ἀλλ' εὐαγὲς ᾖ τὸ ἀποκτεῖναι· καὶ ἄτιμος, φησὶ, τεθνάτω.* And wherever the word *ἄτιμος* occurs in this sense, the grammarians will have it put for *ἀτιμώρητος*[9].

The next kind of *ἀτιμία* consisted in being deprived of all public rights, so that the person on whom it was inflicted could have access neither to the Agora nor the Pnyx, nor any assembly of the people: he could not plead in court, nor take any part in sacred ceremonies; or, if he persisted in doing so, he might be imprisoned[1]. Nothing was more common in Attic law than this punishment; since it was inflicted upon all those who were de-

[6] See Demosth. in Neær. p. 1376.

[7] See Taylor, Argum. ad Demosth. de Fals. Leg. in Reiske's Apparatus Criticus, vol. i. p. 335.

[8] Demosth. Phil. 3. p. 122. Compare de Fals. Leg. p. 428. Æschin. adv. Ctesiph. p. 647. Dinarch. adv. Aristogit. p. 108. Steph.; and see Taylor on the oration de Fals. Leg. p. 474.

[9] See Petit, Leg. Att. viii. 4. p. 675. Lex. Rhetor. in Bekker's Anecdota, i. p. 198. Ruhnken on Timæus, p. 54.

[1] Hence this *ἀτιμία* is defined by Demosth. Phil. 3. 121. *τὸ τῶν Ἀθήνησι κοινῶν μὴ μετέχειν*: and in Mid. p. 47. Spald. *ἁπάντων ἀπεστέρηται τῶν ἐν τῇ πόλει, καὶ καθάπαξ ἄτιμος γέγονε.* Lys. in Andoc. p. 221. R. 105. Steph. *εἴργεσθαι τῆς ἀγορᾶς καὶ τῶν ἱερῶν, ὥστε μὴ ἀδικούμενον ὑπὸ τῶν ἐχθρῶν δύνασθαι δίκην λαβεῖν.*

faulters in paying any fine imposed upon them by law, and were consequently indebted to the public treasury[2]; upon those who had in any way insulted an Archon in the discharge of his office[3]; refused to pay to their parents those duties which they were bound to do by law[4]; squandered away [75] their patrimony through profligacy[5]; prostituted their chastity[6]; or been convicted of *ἀστρατεία, δειλία, λειποτάξιον*[7], *ψευδομαρτυρίαι*[8]; as well as in many other cases. All, however, did not suffer equal *ἀτιμία*: but in some it was temporary, as in the case of debtors to the treasury, who were released from it upon payment; in others perpetual, when it was meant as a punishment for their crimes; for in the former case it was intended not so much by way of punishment for the offences of which they had been convicted, as an inducement to pay the fine incurred thereby.

The third, and least severe, description of *ἀτιμία* was when an offender was punished with only a partial suspension of his rights, whence he was called (to use the words of Andocides) *ἄτιμος κατὰ προστάξεις*, i. e. with certain restrictions. After the expulsion of the thirty tyrants, several were degraded in this way. Some, for instance, were excluded from speaking in assembly; some from becoming senators; others from laying informations; and others again were prohibited from sailing to the Hellespont, or to Ionia, or even from entering the Attic market: though in all other respects they were on a par with the rest of the citizens[9].

[2] Isocr. de Big. p. 848. seq. Dinarch. adv. Aristogit. p. 106. 25. Steph. Demosth. in Nicostrat. p. 1246. and in many other passages.

[3] Demosth. Mid. p. 18. Spald.

[4] Demosth. adv. Timocr. p. 733. Diog. Laërt. in Solon. p. 37.

[5] Diog. Laërt. ut sup. Æschin. adv. Timarch. p. 55.

[6] Æschin. adv. Timarch. *passim*.

[7] Æschin. adv. Ctesiph. p. 566. Lys. in Alcibiad. p. 523. R. See Taylor, ib. 554.

[8] Isæus de hæred. Dicæogen. p. 52. 32. Steph.

[9] The whole doctrine of this *ἀτιμία* may be seen in Andocides, de Myst. p. 36. R. 10. Steph. a passage which Petit has well applied (Leg. Att. 469.) in explanation of Ulpian on Demosth. Mid. p. 343, ed. Benen. *τῶν ἀτιμου-*

[76] I remarked before, that a certain age was also requisite for enjoying the privilege of voting at the assemblies. Aristotle remarks generally: *παῖδας τοὺς μήπω δι' ἡλικίαν ἐγγεγραμμένους, καὶ τοὺς γέροντας τοὺς ἀφειμένους φατέον εἶναι μέν πως πολίτας, οὐχ ἁπλῶς δὲ λίαν, ἀλλὰ προστιθέντας, τοὺς μὲν ἀτελεῖς, τοὺς δὲ παρηκμηκότας*[1]. Thus among the Athenians too, no one attained the enjoyment of the full rights of the state, till the age of eighteen, when he was registered in the *ληξιαρχικὸν γραμματεῖον*. I imagine that those are mistaken, who hold that this could not be done till the age of twenty; as Harpocration, Pollux, Petit, and his followers do[2]. For in the first place, Demosthenes, in his orations against Aphobus and Onetor, shews that at the age of eighteen he was enrolled among the citizens, [77] and having now entered upon his inheritance, brought an action against his guardians[3]: and he moreover so mentions this fact, as to

μένων οἱ μὲν τὸ τρίτον μέρος τοῦ σώματος ἠτιμοῦντο, οἱ δὲ τὰ δύο, οἱ δὲ ὁλόκληρον, καὶ οὗτοι οὐδενὸς μετεῖχον τῶν κοινῶν. Of these the first are *οἱ κατὰ προστάξεις ἄτιμοι*; the second, those who might be restored to the former privileges; the third, those who could not. *Σῶμα* (which word Andocides uses, *ὧν τὰ μὲν σώματα ἄτιμα ἦν, τὴν δ' οὐσίαν ἔσχον*) the Attics used in much the same sense as the Romans did the word *caput*, that is, a person's standing in the state; thus *capitis diminutio* nearly corresponds with *ἀτιμία*. Thus, too, in Antiphon, *περὶ τοῦ χορ.* p. 141. 16. Steph. *κίνδυνος περὶ τοῦ σώματος* is said of banishment, as is clear from what follows, 142. 11. *ζημιῶσαι καὶ ἐξελάσαι ἐκ τῆς γῆς ταύτης.* In Lysias, in Pancleon. p. 167. 35, *περὶ τοῦ σώματος ἀγωνίσασθαι*, means *for liberty*. Id. *ὑπὲρ τοῦ σηκοῦ*, p. 110. 30. *τοὺς περὶ τοῦ σώματος κινδύνους.* but a little before, p. 108. 31. *περὶ τῆς πατρίδος καὶ περὶ τῆς οὐσίας ἀγωνίζεσθαι.* and 111. 43. *εἰ φυγὰς καταστήσομαι.* Dinarch. in Demosth. p. 90. 34. *δικάσαι περὶ τοῦ σώματος καὶ τῆς ψυχῆς*, which he explains himself soon afterwards, *ἐκβαλεῖν ἢ θανάτῳ ζημιῶσαι.* Isæus, de Pyrrhi Hæred. p. 44. 16. *ἐκινδύνευεν ἂν περὶ τοῦ σώματος καὶ τῆς οὐσίας ἁπάσης.* I have adduced these passages, because I am not aware that others have yet noticed this use of the word *σῶμα*.

[1] Aristot. Polit. iii. cap. 1.

[2] Harpocrat. in v. *ἐπιδίετες ἡβῆσαι. Οἱ ἔφηβοι παρ' Ἀθηναίοις ὀκτωκαιδεκαετεῖς γίνονται, καὶ μένουσιν ἐν τοῖς ἐφήβοις ἔτη δύο, ἔπειτα τῷ ληξιαρχικῷ ἐγγράφονται γραμματείῳ.* This passage Suidas and the Etymologist have transcribed. Pollux, viii. 105. *εἰς μὲν τοὺς ἐφήβους εἰσῄεσαν ὀκτωκαίδεκα ἔτη γενόμενοι,—εἰκοστῷ δὲ ἐνεγράφοντο τῷ ληξιαρχικῷ γραμματείῳ.*

[3] Demosthenes, in his oration against Aphobus, tells us that he was left by his father at the age of seven, and was under the care of his guardians ten

make it evident that his was not an extraordinary case, but that this was the usual age. Now if we admit as true the accounts of Pollux and Harpocration, we are compelled to suppose that these several privileges were not conferred till after the age of twenty. Secondly, Lycurgus[4] so combines the expressions ἔφηβον γίγνεσθαι, (i. e. to attained the age of eighteen) and εἰς τὸ ληξιαρχικὸν γραμματεῖον ἐγγράφεσθαι, that they are clearly equivalent terms. And lastly, to bring an additional proof, one Mantitheus, in Demosthenes[5], tells us that he married at eighteen. Now if he could marry at that age, there cannot be a doubt but that he could also be at the same age enrolled among the men. [78] I am not however going to maintain that those are infallibly correct, who inform us that this enrollment *invariably* took place at eighteen[6]. We should rather suppose that, as among the Romans the parents and guardians were at liberty to assign the year in which their sons or wards should take the toga

years (p. 815. in). He speaks, however, in round numbers, as undoubtedly he was older by some months than seven years when his father died, and was under his guardians something more than ten years. For in his oration against Onetor, p. 868. he tells us that he was enrolled among the men immediately after the marriage of his guardian Aphobus, which took place in the archonship of Polyzelus, in the month Scirrhophorion, the last of the Attic year. Now from the archonship of Dexitheus, when Demosthenes was born, to that of Polyzelus, there is an interval of 18 years. Hence it is clear that (as I have before remarked) Demosthenes was enrolled among the men at the age of 18. See Corsin. Fast. Att. Diss. xi. no. 6. In the oration against Onetor, p. 868. he tells us that this was done in the archonship of Cephisodorus, that is, in the nineteenth year after that of Dexitheus, at the conclusion of whose year Demosthenes was born. (See Becker, Dem. als Staatsm. u. Redner, p. 7.) It follows, then, that Demosthenes had not yet completed his 18th year when he was enrolled among the men. Any one who will read the passage of Demosthenes with attention will see the error of those who imagine this was done in the year of Polyzelus, who preceded Cephisodorus. See Corsin. Fast. Att. Diss. xi. no. 6.

[4] In Leocrat. p. 189. R. 155. Hauptm. ἐστὶν ὅρκος, ὃν ὀμνύουσι πάντες οἱ πολῖται, ἐπειδὰν εἰς τὸ ληξιαρχικὸν γραμματεῖον ἐγγραφῶσιν καὶ ἔφηβοι γένωνται.

[5] Or. in Bœot. de dote. p. 1009.

[6] Zosimus Ascalonita in the Life of Demosthenes in Reiske, vol. iv. p. 147. Schol. on Æschin. in Timarch. p. 44. 1.

virilis[7], so among the Athenians no one particular period was appointed for being enrolled, provided that it was not done before the attainment of the eighteenth, nor after the completion of the twentieth year. This view shews us in what sense we are to take a law mentioned by Demosthenes and Hyperides[8], which orders *ἐὰν ἐξ ἐπικλήρου τις γένηται, ἅμα καὶ ἡβήσῃ ἐπὶ δίετες, κρατεῖν τῶν χρημάτων.* That is, That no youth remain in a state of pupilage beyond two years after he shall have attained his puberty; i. e. the age of eighteen, when we know they were made *ἔφηβοι*[9]. Harpocration and Pollux are in error, in understanding the law to mean, that no one could be released from his guardian, and consequently be enrolled among the men, before his twentieth year.

If a guardian was desirous that his ward should be enrolled, and enter upon his inheritance, before his twentieth year, it appears to have been necessary for the youth to undergo a certain scrutiny, to ascertain whether he was of such a habit of body as to be accounted in possession of his puberty, and capable of performing any duties of the state which might be imposed on him. Aristophanes and his Scholiast both make mention of this scrutiny[1]; as well as Demosthenes, who, [79] in stating that he was enrolled among the men at eighteen, uses the expressions *δοκιμασθῆναι, ἄνδρα εἶναι δοκιμασθῆναι,* and

[7] See Adam, Antiq. Rom. and Schwarz. ad Nieuport. vi. 1. 1.

[8] Demosth. in Stephan. p. 1135. Hyperid. ap. Harpocrat. in *ἐπιδιετ. ἡβ.* Compare Isæus de Cironis hæred. p. 72. 16. and de Aristarch. hæred. p. 80. 44. Steph.

[9] See Harpocrat. and Pollux. Vales. ad Harpocrat. p. 68.

[1] Aristoph. Vesp. 578.

παίδων τοίνυν δοκιμαζομένων αἰδοῖα πάρεστι θεᾶσθαι.

where the Schol. remarks: *τῶν γὰρ παίδων ἡλικίαν δοκιμάζοντες, τὰ αἰδοῖα ἐσκόπουν, διὰ τὸ δεῖσθαι αὐτῶν εἰς τὸ χρησιμεύειν ἐν ταῖς λειτουργίαις.* A fabrication worthy of the sciolist. The Romans, too, sometimes thought that puberty was to be ascertained from the general appearance of the body, and not from any particular age. Tribonianus, however, is mistaken, Institt. i. tit. 22. in supposing that this unseemly inspection of the person was in use at Rome also. See Heinecc. Antiq. Rom. sec. ord. Institt. i. 22. p. 225—8.

ἄνδρα γενέσθαι, as synonymous [2]. And all who were thus enrolled, whether of the age of eighteen or twenty, were qualified to attend and give a vote at the assemblies.

The decrepit old men, whom Aristotle calls *τοὺς γέροντας τοὺς ἀφειμένους*, were in all probability excluded from voting; though this fact is nowhere expressly asserted [3]. [80] Every demus seems to have kept a list or record of those who had a right to vote. We may infer this from Demosthenes, who makes mention of certain *πίνακες ἐκκλησιαστικοί*, to which I am unable to attach any other meaning than this [4].

Slaves of course, and all aliens, were excluded from the assemblies;

δούλοις γὰρ οὐκ ἔξεστ' ἀκούειν τῶν λόγων,

[2] Orat. i. contr. Aphob. p. 825. or. 3. p. 857. or. 1. cont. Onetor. p. 865, &c. And see Harpocr. in *δοκιμασθείς*, and Vales. ad h. l. p. 49. The expression *ἄνδρα εἶναι δοκιμασθῆναι* clearly shews that we are to understand the personal inspection, and not the scrutiny of birth, as Petit supposes, Leg. Att. ii. 4. p. 229 seq. imagining that there were two *δοκιμασίαι*, one at the age of 18, when youths were made *ἔφηβοι*, and the other at 20, when they were made men: but this is a false distinction. It should, however, be remarked that the ancients themselves usually speak of this *δοκιμασία*, as if applicable only to orphans; as for instance Xenophon, de Rep. Ath. 3. 4.

[3] We might naturally suppose that a passage of Suidas refers to this, in v. *τριώβολον*: *οὐδεὶς ἐδίκαζεν, εἰ μὴ ἐπέβαινε τῶν ξ' ἐνιαυτῶν· ὅσοι δὲ τελείας ἡλικίας ἦσαν, εἰσήρχοντο μὲν εἰς τὴν ἐκκλησίαν, οὐκ ἐδίκαζον δὲ——ἀφῆλιξ δὲ εἰς τὴν ἐκκλησίαν οὐκ εἰσήρχετο.* For it might seem that *ἀφῆλιξ* signifies here, as it does in innumerable other passages, a decrepit old man, that is, one beyond the age of 60. If, however, we compare the Scholiast on Aristophanes, (from whom Suidas took this statement), omitting the beginning, *ἐν τῇ ἐκκλησίᾳ οὐδεὶς ἐδίκαζεν, κ. τ. λ.* it will be evident that no opposition is intended between the assemblies and the courts, nor between *ἀφῆλιξ*, and those who are *τελείας ἡλικίας*, but that the meaning is merely this; that no one under 60 years of age had a right to judge at the assembly (which we see is again confused with the *courts*); that those who were younger than this might attend, but not sit as judges; but that those who had not attained puberty (*ἀφήλικας*) might not even attend. On this signification of the word *ἀφῆλιξ*, viz. one under puberty, see Phrynicus in Bekker's Anecdota, i. p. 3, and *Συναγ. λεξ. χρησ.* ib. p. 470. Pierson on Mæris, p. 83. Bergler and Wagn. on Alciphr. i. ep. 6. p. 41. But the whole of that Scholium is of no authority.

[4] Demosth. c. Leoch. p. 1091. *οἷός τ' ἦν εἰς τὸν Ὀτρυνέων πίνακα τὸν ἐκκλησιαστικὸν ἐγγράφειν αὐτὸν, Ἐλευσίνιος ὤν.* I am not aware that mention is elsewhere made of these *πίνακες*.

in the words of Aristophanes[5]. Yet it was not an uncommon thing to admit both of these, by permission of the people, to prefer any suit, on obtaining ἄδεια, or to complain of some grievous injury done them by any citizen, or to lay information, of which kind several instances may be found in the orators[6]; or in a case of necessity, to consult with the people on points about which they alone could decide; or lastly, in the event of the arrival of ambassadors from other states.

[81] It appears, however, that we must except those who were called ἰσοτελεῖς; that is, foreigners, who by permission of the people enjoyed nearly equal rights with the citizens. Not only were they exempt from paying the μετοίκιον, or annual tribute of the μέτοικοι, and allowed to pay an equal proportion of taxes with the citizens (ἴσα τελεῖν); but they were in the same condition, and held the same rights, with those who had been presented with the freedom of the state. Suidas, at least, explains the term ἰσοτελεῖς to mean those, who, as an honorary distinction and in reward for peculiar services conferred on the state, were promoted by the people from the rank of μέτοικοι to that of adopted citizens[7]. Ammonius also has the following gloss: ἰσοτέλης· πάντα τὰ αὐτὰ ἔχων τοῖς πολίταις, πλὴν τοῦ ἄρχειν: and Timæus[8]; ἰσοτέλης· ὁ χωρὶς ζημίας ἐπιδημῶν ἴσα τοῖς

[5] Thesmoph. v. 294. Compare Plutarch, Phoc. cap. 34.

[6] Andocid. de Myst. p. 2. 38. Steph. Lys. in Agorat. p. 132, 38, and p. 135, 4. Æschin. in Timarch. p. 84. We may infer from a passage in Demosthenes, in Neær. p. 1375, τοὺς δὲ πρυτάνεις κελεύει τιθέναι τοὺς καδίσκους ὁ νόμος, πρὶν τοὺς ξένους εἰσιέναι καὶ τὰ γέρρα ἀναιρεῖν, that it was usual to admit strangers to the assembly towards its close, when all other business had been dispatched. Otherwise they used to stand outside; whence Æschines, cont. Ctesiph. p. 616. ἀνεβόησεν ὁ δῆμος καὶ ὅσοι ξένοι περιέστησαν τὴν ἐκκλησίαν.

[7] Suid. in v. Οἱ ἀπὸ τοῦ μετοικεῖν κατά τινα τιμὴν παρὰ τοῦ δήμου γενομένην κατὰ ψήφισμα μεταβαίνοντες εἰς τὸ τῶν δημοποιήτων δίκαιον, ἰσοτελεῖς ἀνομάζοντο. ἐγίνετο δὲ τοῦτο τοῖς μετοίκοις ὑπὸ τῆς πόλεως, ὅτε ἐδόκουν εὖ πεποιηκέναι τὸ κοινόν.

[8] Lex. Plat. p. 151.

πολίταις, i. e. one who lives in the state with equal privileges with the citizens. Wolf[9], therefore, with great reason supposed that a vote too was granted them, and permission to share in the offices of the state. At all events (he observes) the arbiters (διαιτηταὶ) were occasionally chosen by the citizens themselves out of their number[1]. And Cicero informs us that Lysias the orator, who, it is well known, was an ἰσοτέλης, discharged at Athens every office of a citizen[2]. As to what Ammonius tells us, that they could not hold magistracies, this inability, in fact, extended to all the adopted citizens[3], from whom they appear to have differed in one respect only, [82] viz. in not being enrolled in the register of any demus, and being unable to bequeath their rights to their posterity.

To prevent any one not duly authorised from giving a vote at the assemblies, the Lexiarchs were especially enjoined to take notice of delinquents in this respect, and give information against them. Οἱ Ληξίαρχοι, observes Pollux, τοὺς ἐκκλησιάζοντας ἐξήταζον[4]. The punishment of those who unlawfully assumed to themselves the rights of citizens was imprisonment, and upon conviction they were sold as slaves[5].

A ridiculous idea is entertained by some[6], that anciently, before the time of Cecrops, the women also attended and voted at the assemblies. Indeed I should not have even noticed such an opinion, had I not seen that Petit, who is wonderfully partial to such like follies, has gravely asserted it as an unquestionable fact. It may perhaps be worth while to add, that the Athenians (as

[9] Proleg. ad Demosth. Leptin. p. lxx.

[1] Demosth. in Phorm. p. 912. extr.

[2] Cic. Brut. cap. 16.

[3] For these could be made neither Archons nor priests. Demosth. in Neær. p. 1376.

[4] VIII. 104.

[5] Ulpian. on Demosth. in Timocrat. p. 467. ed. Benen.

[6] Varro ap. Augustin. de Civ. D. xviii. c. 9. See Petit, p. 288. Meursius de Regn. Att. i. cap. 10.

we learn from many passages in Aristophanes [7]) carried staffs as usual even at the assemblies—a custom which did not prevail at Sparta [8]. In none of the Grecian states, after the heroic ages, were the people allowed to attend in arms [9].

CHAPTER VII.

On the Duties of the Prytanes and Proedri at the Assemblies.

[83] This is one of those subjects which have long exercised and perplexed the ingenuity of the learned, though hitherto so far unsuccessfully, that several points yet remain to be satisfactorily cleared up. The reader will remember, that we before mentioned two kinds of Proedri and their respective Chairmen. The nature of one of these kinds will be best understood from the explanation of Libanius, or Ulpian, or whoever was the author of the second argument to the oration of Demosthenes against Androtion [1]. *Ἐπειδὴ πολλοὶ ἦσαν (οἱ βουλευταὶ), καὶ δυσχερῶς ἤννυον τὰ πράγματα, διεῖλον ἑαυτοὺς εἰς δέκα μερίδας, κατὰ τὰς φυλὰς, ἀνὰ πεντήκοντα——ὥστε συνέβαινε, τοὺς πεντήκοντα ἄρχειν τῶν ἄλλων ἀνὰ τριάκοντα πέντε* (thus read) *ἡμέρας.——ἀλλ' ἐπειδὴ πάλιν οἱ πεντήκοντα πολλοὶ ἦσαν εἰς τὸ ἄρχειν ἅμα, οἱ δέκα κατὰ κλῆρον μιᾶς ἡμέρας τῶν ἑπτὰ, ὁμοίως δὲ ἕκαστος τῶν ἄλλων ἀπὸ κλήρου ἦρχε τὴν ἑαυτοῦ ἡμέραν, ἄχρις οὗ πληρωθῶσιν αἱ ἑπτὰ ἡμέραι. καὶ συνέβαινε*

[7] Vesp. 33. Eccles. 74. 150. 276. See Casaubon on the Characters of Theophrastus, cap. 5. p. 75. seq. ed. Fischer. Böttiger. Vasengemälde. ii. p. 61.

[8] Plut. Lycurg. cap. 11. extr.

[9] Diodor. xii. cap. 19. Cf. Lucian, Anachars. cap. 34. Eustath. ad Iliad. A. p. 83. Rom.

[1] P. 590. R. See also Ulpian on Demosth. Mid. p. 320. 16. *πρόεδροι ἐκαλοῦντο οἱ πεμπόμενοι ἐν τῇ βουλῇ παρὰ τῆς πρυτανευούσης φυλῆς· οὗτοι δὲ πάλιν ἐπέμποντο παρὰ τῆς βουλῆς εἰς τὸν δῆμον, καὶ προκαθεζόμενοι ἐν τῷ θεάτρῳ· (διὸ καὶ πρόεδροι ἐκλήθησαν.) ἠρώτων τὸν δῆμον, κ. τ. λ.*

τοῖς ἄρχουσι τρεῖς μὴ ἄρχειν.——ἰστέον δὲ ὅτι οἱ μὲν πεντήκοντα ἐκαλοῦντο πρυτάνεις, οἱ δὲ δέκα πρόεδροι, ὁ δὲ εἷς ἐπιστάτης. These Proedri, therefore, were ten in number, elected by lot to hold their office for seven days, during which time they were *presidents* (whence their name) and heads of the whole senate. But the second kind of Proedri differed from these, [84] being elected by lot by the Chairman of the Prytanes from the senators of the remaining nine non-presiding tribes, as often as either the senate or the people were to be convened; which was, in fact, almost daily, as the senate sat on all but holidays. Οἱ πρυτάνεις (observes Pollux[2]) τὴν βουλὴν συνάγουσιν ὁσημέραι, πλὴν ἂν ἄφετός τις ᾖ. These latter, therefore, we shall, for the sake of brevity, call with Corsini *Proedri of different tribes*, as being composed of the nine tribes not in office: and the former, *Proedri of the same tribe*, inasmuch as they were all chosen from the φυλὴ πρυτανεύουσα. Pollux is our chief authority on the subject of the Proedri of different tribes[3]: ὅταν οἱ πρυτάνεις τὸν δῆμον ἢ τὴν βουλὴν συνάγωσιν, οὗτος (ὁ Ἐπιστάτης τῶν πρυτάνεων) ἐξ ἑκάστης φυλῆς πρόεδρον ἕνα κληροῖ, μόνην τὴν πρυτανεύουσαν ἀφιείς. And Suidas gives a nearly similar account[4]. These Proedri, then, of different tribes, were nine in number, one from every tribe, excepting that which was holding its Prytany at the time. They were not, like the

[2] VIII. 95. [3] Ib. 96. extr.

[4] In v. Ἐπιστάτης. I shall not quote the rest of the grammarians, as they all agree with Pollux and Suidas. Luzac (Disquisit. de Epist. ac Proedr. §. 3. post Orat. de Socr. Civ.) supposes that the source whence these later grammarians, Suidas, the Etymologist, as well as Pollux himself, derived all their information, was Telephus Pergamenus, a fragment of whose writings is preserved by Eustathius, (ad Od. P. v. 455. p. 641. ed. Basil.), though, as it appears to me, very much curtailed. I am inclined, however, to suppose that Harpocration consulted the work of Telephus as freely as Pollux, who was contemporary with the latter. Both grammarians follow Aristotle, and there is not such a close resemblance between the accounts of Pollux and Telephus on this subject, as to induce us to suppose that Pollux should have left Aristotle and followed Telephus. Telephus himself, no doubt, compiled from Aristotle.

Proedri of the same tribe, elected for seven days, but merely for as many hours [85] as the session of the senate or meeting of the people lasted. Both kinds of Proedri had certain duties to perform in the assemblies as well as in the senate; but what those duties were, we have no account of sufficient accuracy from any one of the grammarians.

Sigonius, the first of the modern writers who has investigated with any thing like attention and accuracy this subject of the assemblies, and of the Athenian republic in general, imagines that whenever mention is made of the Proedri at the assemblies, we are to understand the nine of different tribes to be meant. He does not even recognize the ten Proedri of the same tribe, whom we have described above as created out of the number of the Prytanes; and, perceiving that the passage we have just quoted from Libanius makes against him, he tells us that he prefers to follow Harpocration[5]. The fact is, he was led into error by a passage in Harpocration where mention alone is made of the Proedri of different tribes: *πρόεδροι ἐκληροῦντο τῶν πρυτανέων καθ' ἑκάστην πρυτανείαν εἷς ἐξ ἑκάστης φυλῆς, πλὴν τῆς πρυτανευούσης, οἵτινες τὰ περὶ τὴν ἐκκλησίαν διῴκουν. ἐκαλοῦντο δὲ πρόεδροι, ἐπειδήπερ προήδρευον τῶν ἄλλων ἁπάντων. πολλάκις δὲ ἔστι τοὔνομα παρὰ τοῖς ῥήτορσιν, ὡς καὶ παρὰ Δημοσθένει ἐν τῷ κατ' Ἀνδροτίωνος, καὶ Αἰσχίνῃ ἐν τῷ κατὰ Κτησιφῶντος. ὅτι δὲ ὁ καλούμενος Ἐπιστάτης κληροῖ αὐτοὺς, εἴρηκεν Ἀριστοτέλης ἐν Ἀθηναίων πολιτείᾳ.* That this passage is corrupt, is evident; for, not to mention the omission of the preposition before *πρυτανέων*, the assertion that the Proedri of different tribes were created *κατὰ πρυτανείαν* is contrary to the express testimony of all the other grammarians. In fact they were created, [86] as Pollux and Suidas concur in telling us, as often as the senate or assembly met. On these grounds Cor-

[5] De Rep. Athen. lib. ii. c. 3. p. 560. ed. Paris. (Gron. Thes. A. G. tom. v. col. 1538. Compare also c. 4. p. 564. (Gron. Th. col. 1543).

sini[6] imagines that something has been lost, and proposes to supply the supposed deficiency thus: *πρόεδροι ἐκληροῦντο οἱ μὲν τῶν πρυτανέων* (I should myself prefer to read *ἐκ τῶν πρυτ.*) *καθ' ἑκάστην πρυτανείαν, οἱ δὲ, εἷς ἐξ ἑκάστης φυλῆς, κ.τ.λ.* This correction is certainly probable, as it makes the passage consistent with the accounts of the rest of the grammarians; for though Libanius makes no express mention of the ten Proedri of the same tribe being created *κατὰ πρυτανείαν*, yet it seems exceedingly probable that at the commencement of every Prytany, the Prytanes drew lots to determine what parties should hold the presidency for each period of seven days, and in what order they should succeed each other. Luzac, however, adopts a different emendation[7]: *προέδροι ἐκληροῦντο ὑπὸ τῶν πρυτανέων καθ' ἑκάστην ἐκκλησίαν*; and I will shortly give my reasons for thinking this not an improbable one. But however the case may really be, I am convinced that Sigonius has attributed too much authority to this passage in Harpocration: and although that grammarian (according to the common reading) makes mention only of one kind of Proedri, yet this is surely no reason for denying the existence of the other, which is mentioned by Libanius. We must, however, pardon this error, especially in a writer who has been the first to distinguish himself by his researches into this and similar subjects, and who has made ample compensation for his mistakes by collecting much excellent information. We should pardon it, too, the more readily, as the passages of Demosthenes and Æschines which Harpocration and Sigonius quote, are not sufficient of themselves to furnish full information on the subject of the Proedri, [87] nor to enable us to determine which of the two kinds we are to understand, unless we can derive some further knowledge respecting them from other sources[8]. And it must cer-

[6] Fast. Att. Diss. vi. n. 7.

[7] Disquisit. de Epist. ac Proedr. §. 4.

[8] The passages are as follows: Demosth. adv. Androt. p. 596. R. *οἱ προεδρεύοντες τῆς βουλῆς, καὶ ὁ ταῦτ' ἐπιψηφίζων Ἐπιστάτης ἠρώτων καὶ διαχειροτονίαν ἐδίδοσαν.* Æschin. adv. Ctesiph. p. 430. R. *τοὺς δὲ πρυτάνεις ποιεῖν*

tainly be admitted, that most of the grammarians, when they mention the Proedri, allude to the nine of different tribes, and oppose them to the Prytanes, while the accounts they give of their duties have more of error than truth in them. But the fact is, such blind guides are not to be implicitly followed. Little can be done without a careful examination of the ancients themselves, who, living as they did in the most flourishing ages of the republic, have given to posterity a faithful account of the customs which they saw and the times with which they were conversant. Nor ought we to think that any one or two passages in their writings are sufficient to enable us to ascertain the real truth; we should examine and compare every word which seems likely to throw a light on the subject under investigation, and thus ultimately decide, after having, as it were, cast up our accounts, what views we are entitled to entertain as authentic and true: for by this method alone we can attain at least to something like an accurate, if not a full and satisfactory, knowledge of antiquity. This is a method which none of the writers on the Attic constitution subsequent to Sigonius have pursued in investigating [88] the subject now before us. Emmius follows Sigonius implicitly[9]. Petit[1] differs from the latter in one respect only; viz. in recognizing the Proedri of the same tribe, and in rightly distinguishing between the two kinds: which, however, had been done before Petit by Petavius[2], who boasts with some reason of having been the first to discover the truth on this sub-

ἐκκλησίαν——τὸν δ' Ἐπιστάτην τῶν Προέδρων διαχειροτονίαν διδόναι τῷ δήμῳ. Æsch. de Fals. Leg. p. 259. ἐκκλησία γίνεται, ἐν ᾗ Δημοσθένης λαγχάνει προεδρεύειν. Demosth. adv. Timocr. p. 706. τοὺς προέδρους οἳ ἂν τυγχάνωσι προεδρεύοντες ἐν ταύτῃ τῇ ἐκκλησίᾳ. See also Mid. p. 517. Æsch. adv. Timarch. p. 48. Ulpian ad Mid. p. 445. 31. Benen. Postellus, in his tract on the Athenian Republic, c. 7. (Gron. Thes. tom. v. col. 1325) has fallen into a different error. He follows entirely the author of the second argument to the oration against Androtion, and makes no mention whatever of the Proedri of different tribes.

[9] De Rep. Ath. p. 40. and 49. ed. Elzevir.

[1] Petit, lib. iii. tit. 1. p. 271.

[2] Petav. de Doctrin. Temp. lib. ii. c. 1. p. 47.

ject. In one respect, however, both of them agree with Sigonius; and that is, in attributing the whole management and direction of the assemblies solely to the Proedri of different tribes, while those of the same tribe they suppose to have been mere unemployed spectators. And they have been followed in this view by the more recent writers on Attic antiquities, Potter, Bos[3], and others, without the least hesitation or difference, except that the two last named make no mention whatever of the Proedri of the same tribe; whether designedly or accidentally I cannot presume to determine: but in all other respects they have such blind reverence for Petit as almost invariably to acquiesce in his opinion.

Corsini[4] was the first who perceived that the subject demanded deeper investigation; and though for that purpose he judiciously had recourse to the Attic writers themselves, yet he failed in arriving at the truth. For in the first place he has completely overlooked many passages of the ancients which bear reference to this subject; and, secondly, he has examined so casually, and explained so incorrectly, many others, that he has suffered himself to be led by the grammarians into precisely the same error as Petit, in supposing that only the Proedri of different tribes had the office of regulating the discussions at assemblies, and of putting the question to vote.

[89] Corsini has been followed by his countryman Biagi[5], who, however, has given no new information on the subject, except that he assigns no more employment to the Proedri of the same tribe in the senate, than Corsini gave them in the assemblies. Latterly, Luzac has again taken the whole subject into examination, and proved by incontrovertible arguments, that all those duties, which Petavius, Petit, Potter, Corsini, Biagi, and others had assigned to the nine Proedri of different tribes, are in reality to be considered peculiar to the ten of the same

[3] Potter, Archæol. Gr. lib. i. c. 17 and 18. Lamb. Bos. Ant. Gr. P. 2. c. 6.

[4] Fast. Att. Diss. vi.

[5] De Decret. Athen. chap. xiii.

tribe and their Chairman. But though I give my unqualified assent to this discovery of the learned author's, yet I cannot but consider his disquisition on the office of the Proedri of different tribes as entirely groundless and erroneous, or, to say the least, as completely unconfirmed by any sufficient proofs. But we must now examine each point individually, and first of all take a review of Luzac's arguments against Corsini—a labour which I would willingly have spared, had I not observed that that excellent oration *de Socrate Cive* was less known in Germany than it deserves. In the next place, we must supply a few omissions of his; and lastly, endeavour to shew the fallacy of his conjecture on the duties of the Proedri of different tribes.

Now first, we learn from Demosthenes, that it was the office of the ten Proedri of the same tribe, elected out of the Prytanes, to propose to the people the subjects to be discussed by them in assembly, to have the previous bill (*προβούλευμα*) of the senate recited, and to give permission to the orators to speak—all which business is implied by the word *χρηματίζειν*. This we learn from the words of the law itself which is adduced by Demosthenes in the oration against Midias: *τοὺς πρυτάνεις ποιεῖν ἐκκλησίαν ἐν Διονύσου τῇ ὑστεραίᾳ τῶν Πανδίων·* [90] *ἐν δὲ ταύτῃ χρηματίζειν πρῶτον μὲν περὶ ἱερῶν, κ. τ. λ.* We see therefore that the Prytanes are enjoined to introduce the subjects to the people; but that only the ten Proedri, and not the whole body of fifty, are meant, is most evident from Demosthenes' own comment upon the law: *ὁ μὲν νόμος οὗτός ἐστιν—λέγων, ὥσπερ ἠκούσατε, ποιεῖν τὴν ἐκκλησίαν ἐν Διονύσου μετὰ τὰ Πάνδια. ἐν δὲ ταύτῃ ἐπειδὰν χρηματίσωσιν οἱ πρόεδροι περὶ ὧν διῴκηκεν ὁ Ἄρχων, χρηματίζειν κελεύει, κ. τ. λ.* The same is proved by another passage in Demosthenes, (*de Coron.* p. 284.) where he speaks of an assembly being convened on the news of Philip having invested Elatæa, and of the Prytanes announcing to the people the information which they had received. *Τῇ δ' ὑστεραίᾳ ἅμα τῇ ἡμέρᾳ οἱ μὲν πρυτάνεις τὴν βουλὴν ἐκάλουν εἰς τὸ βουλευτήριον. ὑμεῖς δ'*

εἰς τὴν ἐκκλησίαν ἐπορεύεσθε· καὶ πρὶν ἐκείνην χρηματίσαι καὶ προβουλεῦσαι, πᾶς ὁ δῆμος ἄνω καθῆτο· καὶ μετὰ ταῦτα ὡς εἰσῆλθεν ἡ βουλὴ, καὶ ἀπήγγειλαν οἱ πρυτάνεις τὰ προσηγγελμένα ἑαυτοῖς καὶ τὸν ἥκοντα παρήγαγον, κἀκεῖνος εἶπεν, ἠρώτα ὁ κήρυξ, τίς ἀγορεύειν βούλεται; There can be no doubt, therefore, but that whenever the Proedri are said *χρηματίζειν*, we are to understand those of the same tribe, as for instance in Æschines; *πῶς δὲ κελεύει (ὁ νόμος) τοὺς προέδρους χρηματίζειν*; and in Demosthenes; *τοὺς προέδρους οἳ ἂν τυγχάνωσι προεδρεύοντες ἐν ταύτῃ τῇ ἐκκλησίᾳ, χρηματίζειν ἐπάναγκες πρῶτον μετὰ τὰ ἱερὰ περὶ τῶν νομοθετῶν.*

When the discussion was at an end, the question was put to vote by the Prytanes, or rather their Chairman, as we know from many passages in the ancients. We may first instance Thucydides, who gives the words of Nicias when sensibly and eloquently endeavouring to dissuade his fellow-citizens from undertaking the rash and destructive expedition against Sicily, and demanding that the subject should be reconsidered and the votes of the people taken upon it:—*Καὶ σὺ, ὦ πρύτανι, ταῦτα, εἴπερ* [91] *ἠγῇ σοὶ προσήκειν κήδεσθαί τι τῆς πόλεως, καὶ βούλει γενέσθαι πολίτης ἀγαθὸς, ἐπιψήφιζε καὶ γνώμας προτίθει αὖθις Ἀθηναίοις.* He addresses one of the Prytanes; the power therefore of giving the people leave to vote at the assemblies belonged to the president of the Prytanes, and not of the Proedri of different tribes, to whom this office is assigned by Corsini. But this passage proves another point also: viz. that the Chairman had the power not only of putting the subject to vote (*τοῦ ἐπιψηφίζειν*), but also of permitting the orators to speak, (*γνώμας* or *λόγους προτιθέναι*). The second proof may be deduced from the story of Socrates, given us by Plato, Xenophon, and Æschines (or whoever was the author of the Axiochus[6]), that when the Athenians, exasperated

[6] Plato, Apolog. p. 32. a. Xenoph. Memorab. I. 1, 18. IV. 4, 2. Æschin. Axioch. c. 12. For more information the reader is referred to Luzac, Probat. et Annot. ad Orat. de Socrate Cive, p. 89. seq.

by the intrigues of false accusers, were demanding permission to vote at once on the case of the ten generals who had been accused for not having taken up the dead after the battle of Arginusæ, Socrates, who was acting in that assembly as Chairman, resisted the fury of the people, and persisted in refusing to give them the wished for permission to vote. Plato makes Socrates narrate this event in his own words: *Ἔτυχεν ἡμῶν ἡ φυλὴ Ἀντιοχὶς πρυτανεύουσα, ὅτε ὑμεῖς τοὺς δέκα στρατηγοὺς τοὺς οὐκ ἀνελομένους τοὺς ἐκ τῆς ναυμαχίας, ἐβουλεύσασθε ἀθρόους κρίνειν, παρανόμως, ὡς ἐν τῷ ὕστερον χρόνῳ πᾶσιν ὑμῖν ἔδοξε· τότ' ἐγὼ μόνος τῶν πρυτανέων ἠναντιώθην ὑμῖν, κ. τ. λ.* The meaning of this word *ἠναντιώθην* may be learned from Xenophon, who tells the same story thus: *Ἐπιστάτης ἐν τῷ δήμῳ γενόμενος, ἐνθυμήσαντος τοῦ δήμου παρὰ τοὺς νόμους ἐννέα στρατηγοὺς μιᾷ ψήφῳ ἀποκτεῖναι πάντας, οὐκ ἠθέλησεν* [92] *ἐπιψηφίσαι*[7]. From a comparison of these passages it is evident that it was the Chairman of the Prytanes who gave the people leave to vote on any question; a fact indeed which, as I have said, is sufficiently proved by the passage from Thucydides. But to adduce the testimony of a later age also[8], we are told by Æschines that Demosthenes was one of the Proedri in the assembly which was held on the twenty-fourth day of the month Elaphebolion, to consider the propriety of making a peace with Philip: and he further informs us[9], that upon a law being proposed by Aleximachus, Demosthenes refused to allow the people

[7] Xenoph. Memorab. I. 1. 18. Cf. Plat. Gorg. 474. a. where Socrates says: *πέρυσι βουλεύειν λαχὼν, ἐπειδὴ ἡ φυλὴ ἐπρυτάνευε καὶ ἔδει με ἐπιψηφίζειν, γέλωτα παρεῖχον καὶ οὐκ ἠπιστάμην ἐπιψηφίζειν.*

[8] I have not referred to the law quoted by Demosthenes, in Timocrat. p. 723. *ἐπὶ τῆς Πανδιονίδος——τῶν προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυρρινούσιος*, because I am aware it may be objected, that it was passed at a meeting of the Nomothetæ, and not at the assembly.—See Book II. c. 2. of this work.

[9] De Fals. Leg. p. 268. *Δημοσθένης ἐν τῷ δήμῳ προήδρευε τούτου τοῦ μηνὸς* (Elaphebolion, as we learn from the preceding part) *ἑβδόμῃ φθίνοντος.* See also p. 260. *ἀναστὰς ἐκ τῶν προέδρων Δημοσθένης, οὐκ ἔφη τὸ ψήφισμα ἐπιψηφιεῖν.*

to vote upon it. Now this was the year in which Themistocles was Archon, and in which also Demosthenes was a senator[1]; and the tribe Pandionis was then holding its Prytany, as we know from a decree, passed a few days only before, and preserved by Demosthenes, although the name and day of the month are corrupt. We should probably write *Ἐλαφηβολιῶνος* for *Ἑκατομβαιῶνος*, and *ἐννάτῃ φθίνοντος* for *ἕνῃ καὶ νέᾳ*; for the decree must have been drawn up between the nineteenth and twenty-fourth days of the month[2]. [93] This emendation, however, has already had the sanction of Corsini, and indeed will admit of no doubt in the mind of any one who has a clear conception of the chain of events which may be deduced from Æschines. Whilst, therefore, the tribe Pandionis, in which Demosthenes was enrolled, was holding its Prytany, it is clear that he was one of the ten Proedri of the same tribe; for the tribe which presided over the senate (*ἐπρυτάνευε*) on the twenty-second day of Elaphebolion (or at least about that day), must necessarily also have presided on the twenty-fourth: since the commencement of the eighth Prytany, which falls in Elaphebolion, is on the eleventh, or, if it be a leap year, on the second, of that month; and its termination on the seventeenth or eleventh of Munychion. Moreover, we learn from another passage in Æschines[3], that Demosthenes was a Proedrus also on the next (the twenty-fifth) day of Elaphebolion: and this may have fallen on the week of office of the Proedri of the same tribe, but cannot have done so on those of different tribes, because *their* office lasted only for a few hours in a single day[4].

[1] Æschin. adv. Ctesiph. p. 450, 451. R.

[2] See above, chap. 2.

[3] Adv. Ctesiph. p. 463.

[4] I shall beg leave to quote a passage also from Antiphon, in confirmation of this opinion about the Prytanes having the power of allowing the people to vote: *περὶ τοῦ χορ.* p. 790. R. (146. 37. Steph.) *πρυτανεύσας τὴν πρώτην πρυτανείαν ἅπασαν, πλὴν δυοῖν ἡμέραιν, καὶ ἱεροποιῶν καὶ θύων ὑπὲρ τῆς πόλεως καὶ ἐπιψηφίζων καὶ λέγων γνώμας περὶ τῶν μεγίστων καὶ πλείστου ἀξίων τῇ πόλει φανερὸς ἦν.* Luzac gains little by quoting Æschines (adv. Ctesiph.

[94] I trust I have said enough to prove my own views on the subject of the Proedri of the same tribe. In order, however, to shew more fully the fallacy of Corsini's opinion, it will not perhaps be considered superfluous or unprofitable to lay before the reader, for the purpose of refuting it, each several head of the arguments on which he builds his theory. Besides the testimony of the grammarians, which is both obscure and of no authority against that of the writers of antiquity themselves, he furnishes us with the following instances. In a decree preserved by Demosthenes[5], we read: *πρυτανείᾳ φυλῆς Ἱπποθοωντίδος, Ἀριστοφῶν Κολυττεὺς πρόεδρος εἶπεν.* It is clear that Aristophon was not one of the Prytanes, but one of the nine Proedri of different tribes; for the demus Collytus belonged not to the Hippothoontid, but to the Ægeid tribe. But, in the first place, this decree gives an account of what was done, not in the assembly, but in the senate. For the senate, as we learn from the preceding decree of Eubulus, had been commissioned by the people to appoint ambassadors to Philip; and this decree testifies that the commission had been performed by it. In the next place, it is too uncertain what is meant by the concluding words, (which are in every other case found at the beginning), *Ἀριστοφῶν Κολυττεὺς πρόεδρος εἶπεν,* to use them as a fair argument. Are we to understand that Aristophon applied to the senate to appoint ambassadors, according to the desire of the people, and inquired whom they chose to send? But the very words of the decree inform us that this application was made by the Prytanes and Strategi: *πρυτάνεις καὶ στρατηγοὶ ἐχρημάτισαν, τὰ ἐκ τῆς ἐκκλησίας ἀπενεγκόντες.* Perhaps, however, it was customary that such psephismata

p. 384—5.) in support of this view on the subject of the Proedri. The passage which he adduces proves indeed that the Proedri who gave permission to vote were Senators; but does it therefore follow, as Luzac seems to suppose, that they were also Prytanes? Neither Corsini, nor Biagi, nor any one of the grammarians, ever thought of denying that the Proedri of different tribes were Senators as well as the others.

[5] De Coronâ, p. 250.

as this, which were not laws nor bills of the senate, but merely records, such as are now commonly called Protocols, [95] should have the names of the Proedri of different tribes, or that of their Chairman, affixed; and the duty of that officer may have been to have these records duly drawn up, and dictate them to the scribe. This conjecture will not, I trust, be deemed absurd by those who recollect that the supposition that Aristophon made the application, is inadmissible. At all events, it is very clear that the authority of this decree can never have weight in the scale against the combined testimony of Thucydides, Plato, Xenophon, and many others[6].

Secondly: In the following decree (Gruter, p. 405), *Δεδόχθαι τῇ βουλῇ τοὺς λαχόντας προέδρους εἰς τὴν ἐπιοῦσαν ἐκκλησίαν χρηματίσαι περὶ τούτων, γνώμην δὲ συμβάλλεσθαι τῆς βουλῆς εἰς τὸν δῆμον, κ. τ. λ.* Corsini thinks the order of the words shew that those Proedri whose business it was to propose to the people the subject to be discussed, had to be appointed for the ensuing assembly. I think differently. For Æschines speaks in the same style: [96] *ἐκκλησία γίνεται ἐν ᾗ Δημοσθένης λαγχάνει προεδρεύειν.* And we have proved that

[6] Luzac (§. 5.) has proposed a different solution of this obscure subject. He thinks that it does not follow, because a certain demus is added to the name of any citizen, that this citizen should necessarily belong to the tribe in which that demus was situated. He conceives it very possible, that, when any citizen had been enrolled by his father in the books of the Phratriæ, by the name of that demus to which the father himself belonged, still, upon changing his residence and going into some other demus of another tribe, he might be usually designated by the name of the demus to which he had originally belonged. Thus, for instance, he supposes that a person might be still described as belonging to the demus Collytus, of the Ægeid tribe, who in reality no longer belonged to it, but to some demus of the Hippothoontid tribe. I confess I cannot assent to such a supposition. In the first place, I agree with Taylor (Lection. Lysiac. p. 252.) that a citizen was not considered as belonging to the tribe and demus in which he might happen to reside, but to that in which his family were enrolled. In the next place, even though it should be true, as Luzac supposes, that the demus was changed with a change of residence, yet in public records like decrees, citizens would certainly be designated by their legal and formal title, not by that sanctioned by the fashion of the day.

Demosthenes was at that time one of the Proedri who officiated for one week at a time. And why should we not suppose that they, who, we know, drew lots as well as the rest, obtained thereby the duty of presiding in the assemblies which fell on their own week of office?

But in Demosthenes[7] there seems to be distinction made between the Prytanes and Proedri: *φέρε γὰρ πρὸς Διὸς, ἔστιν ὅστις ἂν ἢ πρόεδρός ποτ' ἐπεψήφισεν, ἢ πρύτανις, τούτων τι τῶν ἐν τῷ νόμῳ γεγραμμένων*; If in this passage we understand the Proedrus to mean the Chairman, as it often does, and the Prytanes, his colleagues in office, there will be no difficulty in it. The peculiar office of the Chairman was to take the votes of the people; yet the consent of his colleagues was required, for they could even prohibit this being done. The Prytanes are named when the mention of the Proedrus would have been sufficient, by a pleonastic figure of speech not uncommon in the orators, by which they endeavoured to add weight and emphasis to their eloquence. Had the opinion of Corsini been true, the Prytanes could not have been mentioned, if the office belonged exclusively to the Proedri of different tribes[8].

[81*] Some decrees, however, are produced, which distinctly confirm the opinion of Corsini, and as plainly oppose mine. First, in a decree preserved by Josephus,

[7] Adv. Timocrat. p. 749.

[8] I intentionally omit the passage in Æschines, (adv. Ctesiph. p. 430.) because I am aware that it might seem to favour either side of the question. Luzac (§. 6, p. 101.) has already taken a correct view regarding the passage in Demosthenes, adv. Timocr. p. 707. The words also in the same orator, (adv. Androt. p. 594.) *ταῦτ' ἐπήρετο ὁ Ἐπιστάτης, διεχειροτόνησεν ὁ δῆμος*, and p. 596. *οἱ προεδρεύοντες τῆς βουλῆς καὶ ὁ ταῦτ' ἐπιψηφίζων Ἐπιστάτης*, may, as well as the passage in Æschines, be adduced in support of either opinion. Harpocration has certainly (in v. *Πρόεδροι*) understood this to refer to the Proedri of different tribes; but his opinion will influence none but those who consider him of higher authority than Thucydides, Antiphon, Plato, Xenophon, and Demosthenes himself; from all of whom I have adduced the passages which are in support of my opinion.

the Proedrus who took the votes of the people, is called *Δωρόθεος Ἐρχιεύς* (for thus Corsini has rightly corrected the old reading *Ἀρχιερεύς*) of the Ægeid tribe: while the presidency (*προεδρία*) was held at the time by the Leontid tribe, as Corsini infers from the fact of the scribe, whose name as usual is prefixed to the decree, being called *Εὐκλῆς Μενάνδρου Ἁλιμούσιος*, of the Leontid tribe. This Dorotheus, therefore, could not be one of the Prytanes. Lest, however, any one should be inclined to deny that the decrees in Josephus are of any weight, and suggest that we can scarcely infer with sufficient certainty which was the *φυλὴ πρυτανεύουσα* from the demus of the scribe, we are furnished with another similar instance from Diogenes Laertius, in the life of Zeno. We there have a decree passed by the Athenians in honour of Zeno, which is headed thus:—*Ἐπὶ τῆς Ἀκαμαντίδος, πέμπτης Πρυτανείας,———τῶν προέδρων ἐπεψήφισεν Ἵππων Κρατιστοτέλης* (read *Κρατιστοτέλους*) *Ξυπετεών, καὶ οἱ συμπροέδροι.*

The Xypeteans here mentioned are of the Cecropid, and not the Acamantid tribe, which latter was then holding its Prytany. But since the authority of this decree has been called in question (though without sufficient reason) by Brucker, I will myself produce another, which Boëckh has most kindly communicated to me from the papers of Fourmont, and the beginning of which I have already given in chap. 2. *Ἐπὶ τῆς Λεοντίδος———τῶν προέδρων ἐπεψήφισεν Ἐρ—θε—ης* (perhaps *Ἐρατοσθένης*) *Εὐθυκλεοῦς Προβαλίσιος.* This Probalinthus is a demus of the tribe Pandionis [82*]. I can produce also a fourth, taken from the Attic Inscriptions of Corsini, p. xxxvii., and communicated to me by the same learned friend. It is indeed only a bill of the senate, but it has reference perhaps to this subject, since it is natural to suppose that whoever put any question to the vote in the senate, performed that office in the assembly also.

The Inscription is as follows :—

ΕΠΙ ΔΙΟΝΥΣΙΟΥ ΑΡΧΟΝΤΟΣ ΤΟΥ ΜΕΤΑ
ΠΑΡΑΜΟΝΟΝ ΕΠΙ ΤΗΣ ΑΙΑΝΤΙΔΟΣ Ε
ΒΔΟΜΗΣ ΠΡΥΤΑΝΕΙΑΣ ΗΛΑΜΙΟΣ ΤΙΜΟΥ
ΧΟΥ ΡΑΜΝΟΥΣΙΟΣ ΕΓΡΑΜΜΑΤΕΥΕΝ ΓΑ
ΜΗΛΙΩΝΟΣ ΟΓΔΟΗ ΙΣΤΑΜΕΝΟΥ ΟΓΔΟΗ ΤΗΣ
ΠΡΥΤΑΝΕΙΑΣ ΒΟΥΛΗ ΕΝ ΒΟΥΛΕΥ
ΤΗΡΙΩ ΤΩΝ ΠΡΟΕΔΡΩΝ ΕΠΕΨΗΦΙΣΕΝ
ΣΤΡΑΤΟΦΩΝ ΣΤΡΑΤΟΚΛΕΟΥΣ ΣΟΥΝΙ
ΕΥΣ ΚΑΙ ΟΙ ΣΥΜΠΡΟΕΔΡΟΙ.

Here too the Proedrus, of Sunium, in the Leontid tribe, cannot be one of the Prytanes, who are of the Æantid tribe. And no doubt those who have access to a larger collection of inscriptions could produce more examples. For my own part, I have not even Gruter to consult. But what must we do with these Proedri? As we cannot depart from the authority of Antiphon, Thucydides, and all those ancient authors whom I have quoted, and yet must not entirely reject the consistent testimony of the above decrees, it appears to me that we have nothing left, but to suppose that some change was in later times introduced into the office of the Proedri, and that some of the duties which were before exclusively appropriated to the ten of the same tribe, (or Prytanes,) were afterwards assigned to the nine of different tribes. Every one of these decrees were written after Ol. cxviii. in the time when there were twelve tribes; nor can we form any sure conjecture from them about those times, whose prevailing customs and institutions are to be illustrated by the testimony of contemporary writers.

But since we have excluded these Proedri of different tribes from the duty *τοῦ χρηματίζειν καὶ ἐπιψηφίζειν*, it remains to enquire for what purpose they were appointed, [83*] or what office they discharged in the assemblies. This inquiry, however, is a matter of great obscurity, as all the ancients are silent upon the subject; and the only resource I have left is first to refute the opinion of Luzac,

and then to propose my own, such as it may be thought to be. We cannot go beyond conjecture in a subject where the testimony of the ancients fails us.

Luzac, then, after observing the frequent violation of that ancient and salutary law, which forbade any *ψήφισμα ἀπροβούλευτον* (that is, any bill not previously sanctioned by the authority of the senate), to be presented to the people: and remarking the consequent abolition of the prerogatives and power which the senators, in such cases, exercised in the assemblies;—Luzac, I say, after this, surmises that there must have been some beside the Prytanes, or Proedri appointed from the Prytanes, to preside in such assemblies. "Quin in universum (he remarks), quia accidere poterat, ut Senatus judicium vel auctoritas cum voluntate aut ardore populi conflictaretur ac velut collideretur, hinc factum videtur, ut, invalescente magis magisque Democratiâ, si minus populi licentiâ, hic sibi suæque dignitati consultum voluerit, lectis Epistatâ et Proedris, qui sua jura suave placita tuerentur, si quando a Prytanibus et Senatu concio dissideret." I have an answer to this at once. Although it be perfectly true, that measures were often proposed by the orators for the sanction of the people, even though the approbation of the senate had not been previously obtained on the subject, yet I deny that the law ever permitted this; and any one who has read even the single oration of Demosthenes against Androtion with attention, will, I believe, agree with me. For the greater part of that oration is taken up with shewing that Androtion acted wrongly in proposing to the people a *ψήφισμα ἀπροβούλευτον*, although in an affair of such slight import, that it might seem scarcely to require [84*] the authority of the senate. And yet the orator maintains that this delinquency should be punished for the sake of example: *ἂν σὺ νῦν δίκην δῷς, ἄλλος οὐ γράψει*. Now were this forbidden by law, how could these Proedri of different tribes have been appointed for an occasion against the occurrence of which the laws had been careful to provide, to take the place, and perform the

office, of the Prytanes, in case any decree should be proposed to the people without the previous sanction of the senate, when that body neither could nor would act?—unless indeed we suppose (what no one in his senses can) that these very Proedri were always appointed by the Prytanes reluctantly and by compulsion, in defiance of the laws. In the next place, Luzac's opinion chiefly rests on the idea that the nine Proedri of different tribes were elected from the people, and not from the senate. But this idea is not only most false, but even at variance with the accounts of the grammarians, who inform us, that these Proedri had duties to perform in the senate as well as in the assemblies. *Ἐπειδὰν δὲ* (says Suidas) *οἱ Πρυτάνεις συναγάγωσι τὴν βουλὴν ἢ τὸν δῆμον, ὁ ἐπιστάτης κληροῖ προέδρους ἐννέα ἀπὸ φυλῆς ἑκάστης ἕνα, πλὴν τῆς πρυτανευούσης.* What then? Did men who were not senators preside (in their own capacity at least) over the senate? If they did, it was by a strange and unparalleled institution, for which it would be difficult to assign a satisfactory reason. But who that has read the passage of Suidas can for a moment think any thing else is meant by *tribes*, than those members of them who are senators? For in opposing the *φυλὴ πρυτανεύουσα* (which certainly means the senators representing it), to the *φῦλαι οὐ πρυτανεύουσαι*, he should have added something explicit, if he had not intended these also to mean the senators belonging to the tribes. Neither Corsini, therefore, nor Biagi, nor any one except Luzac, have thought of denying that the Proedri of different tribes were senators. But Luzac, seeing, I suppose, the absurdity of making presidents of the senate [85*], those who he had just asserted were not senators, conceived that he must also deny any office in the senate to have been held by these Proedri of different tribes: and for that reason, when Pollux and Suidas tell us that these officers were created as often as the senate OR assembly was held, which overthrows Luzac's view, he would read in both authors the copulative instead of the disjunctive particle; i. e. instead of *Ἐπειδὰν οἱ πρυ-*

τάνεις συναγάγωσι τὴν βουλὴν ἢ τὸν δῆμον, he thinks we should read τὴν βουλὴν ΚΑΙ τὸν δῆμον. Thus at length, he observes, we shall find a place for the appointment by lot of these nine Proedri, viz. when the senate and the people *at the same time* was convened for the sake of proposing a measure. For the same reason he would rather read in Harpocration πρόεδροι ἐκληροῦντο ὑπὸ τῶν Πρυτανέων καθ' ἑκάστην ἐκκλησίαν (instead of the common reading καθ' ἑκάστην πρυτανείαν), than follow the emendation of Corsini, which we have given before. I cannot sanction Luzac's alteration of Suidas and Pollux, because it is clear, as well from the decree in Demosth. *de Coron.* p. 250, as from the other which we shortly before adduced from Corsini's Attic Inscriptions, that the Proedri of different tribes had a place in the senate also. I do not oppose him about Harpocration, both because in what follows too that grammarian merely mentions the assemblies, and defines the Proedri to be those οἵτινες τὰ περὶ τὴν ἐκκλησίαν διῴκουν; and also on account of a very similar passage in the Lexicon Rhetoricum, not published in Luzac's time, but now printed by Bekker[9], which he also has used: οἱ περὶ τὰς ἐκκλησίας Ἀθήνῃσι διοικοῦντες, πρόεδροι ἐκαλοῦντο· κληρούμενοι ὑπὸ τῶν πρυτανέων καθ' ἑκάστην ἐκκλησίαν ἐξ ἑκάστης φυλῆς, κ. τ. λ. Neither say any thing on the duties of the Proedri in the senate, through either error or negligence: [86*] for that there is more truth in the accounts of Pollux and Suidas, the two decrees, I think, sufficiently prove.

Luzac adds some remarks on the trials held by the people, in which he thinks these nine Proedri had a particular share: but we shall find a more suitable occasion hereafter of discussing this part of his disquisition, which has some points requiring comment. For the present, I will merely observe, that if we keep in mind the very common mistake of the grammarians in confusing the assembly with the courts (the reason of which I have en-

[9] Anecdot. tom. i. p. 290.

deavoured to explain in chap. 4.), we shall immediately perceive that in the passage of Suidas adduced by Luzac, there is nothing which can be referred to εἰσαγγελία properly so called. The fact is, δίκη is there put for any business which is laid before the people, because, as I have already remarked, in the latter times of the Attic republic, most of the business of which the people had the control and management, was judicial: and hence δικασταὶ in Suidas are the same as ἐκκλησιασταί.

I will now briefly give my own opinion on the subject of these Proedri of different tribes. I will admit that I have no express authority of the ancients on my side; but I hope that in a subject so obscure any conjecture consistent with reason and probability will be thought worthy of some consideration. The Prytanes, then, with their Proedri and Chairman, were all of one and the same tribe. As long as they were in office, they represented the whole senate; and whatever business was to be done by the senate or the people, had first to be referred to them, by them to the senate, and lastly by the senate to the people. The Prytanes also convened, and regulated during their discussions, the senate and the people. But in proportion as the affairs of the state committed to them were more extensive and important, [87*] greater caution was required that they should not abuse their power. Being all of one tribe, and some of them of one demus, and therefore closely connected with each other by the bonds of intimacy and relationship; officiating too for the space of thirty-five days as presidents of the senators who represented the other tribes, as well as placed at the head of the whole state,—they had ample opportunity of combining whenever they saw the interest of their own tribe at variance with that of the rest, and (forgetting that they were members not merely of one tribe, but of the whole state,) of pursuing that course which promised advantage to themselves rather than to the community in general. They were liable too to be deceived by the bad, corrupted by the wealthy, or over-awed by the se-

ditious, and the more easily as their number was small and all had access to them. To avoid, therefore, the possibility of the interests of the state, entrusted to their fidelity, being neglected or betrayed, it seemed a most natural and salutary measure to admit the remaining tribes also to some share at least in the administration of public affairs. To this end, whenever any business was to be transacted in the senate or the assembly, nine officers were appointed, one from each of the non-presiding tribes, to attend, and, as it were, watch the conduct of the Prytanes; and in case the latter proposed any measure adverse to their interests, or contrary to the laws, to interfere by prohibiting its adoption, or testify the approbation of the tribes they represented, by their assent to and concurrence in any useful motion. The reason why they were chosen by lot, and for the shortest time possible, was in order that the chance of their being deceived or corrupted by others might be the less, since no one could tell, before the actual day of entering upon the office, who would be appointed. As, however, they were in close attendance upon the Prytanes in the senate and assembly, and were conversant with every thing which they did, they seem by degrees to have joined the latter in performing certain duties which were originally exclusively appropriated to the latter. And hence I think we must explain [88*] the fact noticed above, of the permission to vote being given to the senate and people in later times by these Proedri of different tribes.

I believe that we must not confound with either of these two kinds of Proedri, that tribe which is called by Æschines and Demosthenes ἡ προεδρεύουσα φυλή, although Luzac thinks that is the same as the φυλὴ πρυτανεύουσα[1]. But he must have forgotten what Æschines tells us; that on account of the violent and disorderly conduct of Timarchus (whose disgrace the beautiful oration of Æschines has immortalized), in daring to attack his adversary with his fists in the midst of the assembly and in the

[1] Lib. i. §. 6. p. 101.

sight of all the people, a law was passed, that in each assembly one tribe should be appointed by lot to sit as presidents under the bema, and be a check upon the unbridled ferocity of such abandoned assailants. *Προσέθεσθε* (says Æschines) *καινὸν νόμον μετὰ τὸ καλὸν παγκράτιον, ὃ οὗτος ἐπαγκρατίασεν ἐν τῇ ἐκκλησίᾳ· ὑπεραισχυνθέντες γὰρ ἐπὶ τῷ πράγματι, καθ' ἑκάστην ἐκκλησίαν, νόμον ἐθήκατε καινὸν, ἀποκληροῦν φυλὴν ἐπὶ τὸ βῆμα, ἥτις προεδρεύσει*[2]. This custom then was new at that time; and no mention is elsewhere made of it, [89*] except once more by Æschines in his oration against Ctesiphon[3]: *τῆς τῶν ῥητόρων ἀκοσμίας οὐκ ἔτι κρατεῖν δύνανται οὔθ' οἱ νόμοι οὔθ' οἱ πρυτάνεις, οὔθ' οἱ πρόεδροι, οὔθ' ἡ προεδρεύουσα φυλὴ, τὸ δέκατον μέρος τῆς πόλεως*: and by Demosthenes, if the first oration against Aristogiton be rightly attributed to him: *οὐ πρύτανις, οὐ κήρυξ, οὐκ ἐπιστάτης, οὐχ ἡ προεδρεύουσα φυλὴ τούτου κρατεῖν δύναται*[4]. Whether these Proedri were of the number of the senators, the above passages do not declare. Since however Æschines, who describes their first appointment, makes no mention whatever of the senate, I think it more probable that they were not senators, but a certain num-

[2] Æschin. adv. Timarch. p. 57. R. where Taylor makes the following remark: "Lege itaque, ut videtur, cautum erat, ut ad immodestiam oratorum compescendam suggestum ascenderent, eo ordine servato, quem tribus in *προεδρίᾳ* servarent." I confess I do not understand the learned commentator. What is the meaning of the order which the tribes observed in the presidency? and where did they observe it? In the assemblies? This ought to have been proved—but I much fear that it never can be. There undoubtedly was a certain order of the tribes; but that related only to military service; and it is impossible to talk of *order in the presidency*. Besides, there is not the slightest mention in the words of Æschines, of any order to be observed by those who occupied the bema: but Taylor interprets the passage as if the orator had said *ἥτις ἂν προεδρεύσῃ*—"the tribe which shall be then in office." This, however, is altogether wrong.

[3] Page 387.

[4] Or. i. in Aristogit. p. 797. It is scarcely worth while quoting the Scholiast on Æschines, who denies the assertion of that orator, that the law was passed on account of Timarchus: *ψεύδεται* (says he,) *οὐ γὰρ διὰ Τίμαρχον· παλαιότερος γὰρ ἦν (ὁ νόμος)*. Hear the man of Greek abusing Æschines! He appears to have fallen into the same error as Luzac, in con-

ber of persons chosen from the tribe to whom the lot had fallen, and commissioned to sit for the purpose of keeping order on the steps in front of the bema, which answered instead of seats. On the same steps the Prytanes also sat, as well as the Proedri of different tribes, if I am not mistaken: whence those who sat nearest to the bema faced the Prytanes, as we clearly learn from the verse in Aristophanes[5],

δεῖ σε καταλαβεῖν ἕδρας
ὑπὸ τῷ λίθῳ τῶν πρυτανέων καταντικρύ.

[90*] These presidents, then, sat by the Prytanes and Proedri, to assist and relieve them in the discharge of their duties: for the latter also were commissioned to keep good order (*εὐκοσμία*), and see that the assembly was conducted with decency and propriety. Hence Demosthenes[6] joins the expressions *οἱ πρόεδροι, τὸ πρόγραμμα, ἡ εὐκοσμία*—for it was a violation of *εὐκοσμία* to harangue the people on any subject unconnected with that proposed in the *πρόγραμμα*. Again, in the Acharnenses of Aristophanes, a speaker who gives dissatisfaction is ordered to be removed by the Prytanes; and Dicæopolis, in the same play, when bullied and robbed by the Odomanti, appeals to the Prytanes for protection:

ταυτὶ περιείδεθ', οἱ πρυτάνεις, πάσχοντά με
ἐν τῇ πατρίδι, καὶ ταῦθ' ὑπ' ἀνδρῶν βαρβάρων[7];

The officers who were employed in the enforcement of the necessary discipline were the crier and the Scythian bowmen, of whom we have before spoken. And Demosthenes mentions the crier in conjunction with the Prytanes and the Chairman[8]: in Aristophanes Dicæo-

founding the *φυλὴ προεδρεύουσα* with the *φυλὴ πρυτανεύουσα*.—Æschines (p. 59.) informs us that the author of the law was accused of unconstitutional measures (*παρανόμων*) by Timarchus: the law, however, appears to have been approved at the trial, as we may infer from the mention of the *φυλὴ προεδρεύουσα* in the orations adv. Ctesiph. and adv. Aristogit. both of which were delivered some years after the oration against Timarchus.

[5] Aristoph. Eccles. v. 86.
[6] Or. i. in Aristogit. p. 772.
[7] Acharn. v. 56. ib. v. 167.
[8] Page 797.

polis is ordered to desist from speaking by the crier [9]; and it is the crier who summons the bowmen to remove Amphitheus [1].—These Scythians are again mentioned in the Ecclesiazusæ;

καὶ τὸν παροινοῦντ' ἐκφέρουσ' οἱ τοξόται.

and shortly afterwards [2];

ἐκεῖνο μόνον ἄσκεπτον, ἤν σε τοξόται
ἕλκωσιν, ὅτι δράσεις ποτέ.

CHAPTER VIII.

On the Ceremonies performed preparatory to holding an Assembly.

[91*] When the people had assembled, and the Prytanes and Proedri arrived, a lustration of the place where they met was performed, previously to commencing the business of the day. "It was customary" (observes Harpocration [1]) "at Athens, to purify the ecclesia, the theatres, and all places of public meeting." The Romans considered it equally important that the place where they held their great Comitia should be previously consecrated by taking the auspices; although there was but little similarity between the ceremonies of lustration at Athens and those of consecration at Rome. In the former state there were no observations of the heavens to be taken—no augurs to take a part in the performance. The rite of purification was performed by an officiating priest called the Peristiarch, *παρὰ τὰ περίστια* (the name by which the sacrifices, or lustral victims, were designated [2]), and

[9] Acharn. v. 59, 64, 124. [1] Ib. v. 54.

[2] Eccles. v. 143 and 258. See also Plato, Protag. p. 319. C.

[1] In v. *καθάρσιον*. Ἔθος ἦν Ἀθήνῃσι καθαίρειν τὴν ἐκκλησίαν καὶ τὰ θέατρα, καὶ ὅλως τὰς τοῦ δήμου συνόδους. Suidas (in v.) has transcribed this.

[2] Ἴστρος δὲ ἐν τοῖς Ἀττικοῖς, "περίστια," φησι, "προσαγορεύεται τὰ καθάρσια." Suidas in v. *περιστίαρχος*. The derivation of the word is evidently *περὶ* and *ἑστία*: it therefore means, properly, something which is carried round the hearth by way of lustration; and thence any lustral victim. Suidas

ἄρχειν, because he *preceded*[3] the victims as they were carried round. These victims, both on this and other similar occasions[4], were young pigs, χοιρίδια μικρὰ, of whose expiatory powers the Athenians had a great idea. These were carried round the place of assembly [92*] after the Peristiarch, and the seats sprinkled with their blood; after which the bodies were thrown into the sea[5]. It is scarcely necessary to observe, that it is merely in joke that a cat is mentioned instead of a pig, in that extremely amusing scene in Aristophanes, the assembly of the women in the Ecclesiazusæ.

Ὁ περιστίαρχος, περιφέρειν χρὴ τὴν γαλῆν[6].

After the Peristiarch, a crier (κήρυξ) followed, burning incense in a censer, this being considered a necessary part of the ceremony[7]. He then, in a form of prayer always made use of on the occasion[8], implored all the gods and goddesses, that the result of the ensuing consultation and decisions of the people might be favourable to the interests of the republic and citizens of Attica; that they would utterly destroy, with their families, all who were ill disposed towards the welfare of the state, or aimed at usurping the sovereignty, or entered into a conspiracy with the Persians to injure the Athenians, or consented for a bribe wilfully to mislead and deceive the people. Frequent mention is made of these prayers in the orators, as Æschines, Demosthenes, Dinarchus[9].

also, on the word given above, explains περιστίαρχος, ὁ περικαθαίρων τὴν ἑστίαν καὶ τὴν ἐκκλησίαν καὶ τὴν πόλιν· ἀπὸ τῆς ἑστίας: but his other derivation, ἢ τοῦ περιστείχειν, is entirely false.

[3] ὁ τῶν καθαρσίων προηγούμενος ἐν ταῖς ἐκκλησίαις. Schol. ad Aristoph. Eccles. v. 128. and Suidas.

[4] See Kühn and Jungermann on Pollux, viii. 104.

[5] Schol. ad Aristoph. Acharn. v. 44. and Schol. ad Æschin. adv. Timarch. p. 48.

[6] Eccles. v. 128.

[7] Schol. ad Æschin. *ut sup.*

[8] The words were dictated by the scribe of the senate. Demosth. de Fals. leg. p. 363.

[9] Æschin. adv. Timarch. p. 48. Demosth. de Coron. p. 319. de Fals. leg. p. 363. adv. Aristocrat. p. 653. Dinarch. adv. Aristogit. p. 84. R. (106. 37. Steph.) ib. 85. R. (107. 8. Steph.) adv. Demosth. p. 35. R. (96. 12. Steph.)

Aristophanes also, [93*] in the Thesmophoriazusæ, represents the female crier delivering a form of prayer, which, if we except the fictitious interpolations about Euripides and the women's affairs, undoubtedly bears a close resemblance to what the crier uttered at the real assemblies: —*Εὐφημία ἔστω, εὐφημία ἔστω*[1]. *εὔχεσθε ταῖν Θεσμοφόροιν, τῇ Δήμητρι καὶ τῇ Κόρῃ, καὶ τῷ Πλούτῳ, καὶ τῇ Καλλιγενείᾳ, καὶ τῇ Κουροτρόφῳ γῇ, καὶ τῷ Ἑρμῇ, καὶ Χάρισιν, ἐκκλησίαν τήνδε καὶ σύνοδον τὴν νῦν κάλλιστα καὶ ἄριστα ποιῆσαι, πολυωφελῶς μὲν πόλει τῇ Ἀθηναίων, τυχηρῶς δ' ἡμῖν αὐταῖς. καὶ τὴν δρῶσαν, τὴν ἀγορεύουσαν τὰ βέλτιστα περὶ τὸν δῆμον τῶν Ἀθηναίων καὶ τὸν τῶν γυναικῶν, ταύτην νικᾷν. ταῦτ' εὔχεσθε, καὶ ὑμῖν αὐταῖς τἀγαθά. ἰὴ παιὼν, ἰὴ παιών.*

εὔχεσθε τοῖς θεοῖσι τοῖς Ὀλυμπίοις,
καὶ ταῖς Ὀλυμπίαισι, καὶ τοῖς Πυθίοις
καὶ ταῖσι Πυθίαισι, καὶ τοῖς Δηλίοις
καὶ ταῖσι Δηλίαισι, τοῖς τ' ἄλλοις θεοῖς·
εἴ τις ἐπιβουλεύει τι τῷ δήμῳ κακὸν
τῷ τῶν γυναικῶν, ἢ Πικηρυκεύεται
Εὐριπίδῃ, Μήδοις, ἐπὶ βλάβῃ τινὶ
τῇ τῶν γυναικῶν, ἢ τυραννεῖν ἐπινοεῖ,
ἢ τὸν τύραννον συγκατάγειν, ἢ παιδίον
ὑποβαλλομένης κατεῖπεν, ἢ δούλη τινὸς
προαγωγὸς οὖσ' ἐνεθρύλισεν τῷ δεσπότῃ,
ἢ πεμπομένη τις ἀγγελίας ψευδεῖς φέρει,
ἢ μοιχὸς εἴ τις ἐξαπατᾷ, ψευδῆ λέγων,
καὶ μὴ δίδωσιν, ἂν ὑπόσχηταί ποτε,
ἢ δῶρά τις δίδωσι μοιχῷ γραῦς γυνή,
ἢ καὶ δέχεται προδιδοῦσ' ἑταίρα τὸν φίλον,
κεἴ τις κάπηλος ἢ καπηλὶς τοῦ χοὸς
ἢ τῶν κοτυλῶν τὸ νόμισμα διαλυμαίνεται,
κακῶς ἀπολέσθαι τοῦτον αὐτὸν κῳκίαν

Aristides is said by Plutarch to have been the author of the anathema on those who embraced the side of the Medes, shortly after the battle of Salamis. Aristid. cap. 10. Ἔτι δ' ἀρὰς θέσθαι τοὺς ἱερεῖς ἔγραψεν, εἴ τις ἐπικηρυκεύσαιτο Μήδοις, ἢ τὴν συμμαχίαν ἀπόλιποι τῶν Ἑλλήνων.

[1] Dinarch. adv. Aristogit. p. 106. 37. ὁ μὲν νόμος εὐξάμενον κελεύει τὸν κήρυκα μετ' εὐφημίας πολλῆς, οὕτως ὑμῖν τὸ βουλεύεσθαι περὶ τῶν πραγμάτων παραδιδόναι.

ἄρασθε· ταῖς δ' ἄλλαισιν ὑμῖν τοὺς θεοὺς
εὔχεσθε πάσαις πολλὰ δοῦναι κἀγαθά.

[94*] If, as I before observed, we make a few omissions and alterations in this passage, we shall find that the mock prayer in the comedy bears a close resemblance to that offered by the crier in the real assembly. For instance, we must of course omit at the beginning, v. 297—301, the invocation of Ceres and Proserpine, and the other gods there mentioned: for this relates solely to the festival of the Thesmophoria, on the third day of which the assembly of the women is supposed to be held, and has no connection with the assembly of the people. We must likewise put out of the question the mention of Euripides, and the private affairs of the women, and substitute in v. 340, from v. 363. εἴ τις τἀπόρρητα τοῖς ἐχθροῖς λέγοι: in v. 342, εἴ τις ἐκ πρεσβείας ψευδῆ ἀπαγγέλλει[2]: in v. 343, seq. εἴ τις ἢ τὴν βουλὴν ἢ τὸν δῆμον ἢ τὴν Ἡλιαίαν ἐξαπατᾷ[3]: v. 345, 6. εἴ τις δῶρα δίδωσιν ἢ λαμβάνει κατὰ τῆς πόλεως[4]: v. 347, seqq. from v. 361. εἴ τις ψηφίσματα ἢ νόμους ζητεῖ ἀντιμεθιστάναι.

After the conclusion of these introductory ceremonies, the subjects on which the people had met to deliberate, were proposed in the assembly: and the first of these was said to be proposed πρῶτον μετὰ τὰ ἱερά. Thus we read in Demosthenes[5], τοὺς προέδρους χρηματίζειν ἐπάναγκες πρῶτον μετὰ τὰ ἱερὰ περὶ τῶν νομοθετῶν. The same form is also found in memorials of other states, as in the decree of the [95*] Byzantines, in Demosthenes *de Corona*, p. 255-6: δεδόχθαι τῷ δάμῳ τῷ Βυζαντίων καὶ Περινθίων, Ἀθηναίοις δόμεν——πόθοδον ποτὶ τὰν βωλὰν καὶ τὸν δᾶμον πράτοις μετὰ τὰ ἱερά.

[2] Compare Demosthenes, de Fals. leg. p. 363.
[3] Demosth. adv. Aristocrat. p. 653. in Timoth. p. 1204.
[4] Dinarch. in Demosth. p. 96. 12.
[5] Adv. Timocrat. p. 706.

CHAPTER IX.

On the Προβουλεύματα, or Decrees of the Senate.

It was illegal to propose any measure to the assembly, which had not previously received the sanction of the senate, and been formally referred by that body to the people. In fact the chief duty of the senate was to prepare, as it were, all subjects for the deliberation of the assembly[1]; beyond which privilege it had no power in the more important affairs of the state. As to the business which Xenophon tells us was consigned to its authority[2], namely, the discussion of questions on war and peace, on the revenues, on passing new laws, on the allies, and other public matters, and the superintendance of the navy and the religious rites,—on all these points nothing could be *determined* except by the people, unless express permission was given by them to the senate[3], to decide according to its own discretion. In matters of smaller import, [96*] the direction of which peculiarly belonged to the senate, so that it was unnecessary to bring them before the people, the decrees of that court only continued in force for the year on which they were passed[4].

Whatever measures had to be proposed to the people were properly called *προβουλεύματα*; and the senate was said *προβουλεύειν* when it previously discussed the pro-

[1] See Plutarch's Life of Solon, c. 19.

[2] De Rep. Ath. iii. 2. *τὴν βουλὴν βουλεύεσθαι (δεῖ) πολλὰ μὲν περὶ τοῦ πολέμου, πολλὰ δὲ περὶ πόρου χρημάτων, πολλὰ δὲ περὶ νόμων θέσεως, πολλὰ δὲ περὶ τῶν κατὰ πόλιν ἀεὶ γιγνομένων, πολλὰ δὲ καὶ τοῖς συμμάχοις, καὶ φόρον δέξασθαι, καὶ νεωρίων ἐπιμεληθῆναι καὶ ἱερῶν.*

[3] In Demosthenes, for instance, we are told (de Fals. leg. p. 389.) that permission was given the senate to determine about sending ambassadors. He also quotes a decree (de Coron. p. 249.) whereby the senate is authorized to appoint ambassadors. Again, Andocides informs us, that in the investigation of the outrage committed in mutilating and throwing down the Mercuries, the senate was made *αὐτοκράτωρ* (de Myster. p. 3, 13, Steph.).

[4] Demosth. adv. Aristocrat. p. 651, and Ulpian in loc. p. 417, Ben. See also Petit, Leg. Att. p. 196. On the duties of the senate, see Boeckh, Œcon. I. p. 165.

priety of allowing them to be proposed. Luzac's opinion[5], that *προβουλεύειν* means to recite the decision of the senate to the people, may be at once refuted by a single passage in Demosthenes, *de Fals. leg.*[6] where he says, *ὑμῖν δὲ πρῶτον μὲν περὶ πάντων τὴν βουλὴν ἀκοῦσαι καὶ προβουλεῦσαι δεῖ·—εἶτ' ἐκκλησίαν ποιῆσαι, κ. τ. λ.* from which it is clear that the senate held this preparatory consultation previously to convening an assembly. The whole subject of the *προβουλεύματα* is explained by the grammarians obscurely and inaccurately. Their information conveys the idea that it was absolutely necessary for every one who was desirous of proposing a measure to the people, first to apply to, and obtain the sanction of, the senate, and then (but on no account before) to lay before the people the bill, which, after having thus met with their approbation, assumed the name of *προβούλευμα*. So the author of the Lexicon Rhetoricum[7]: *προβούλευμα* (perhaps we should read *προβουλεύειν*) *τὸ τὴν βουλὴν τῶν πεντακοσίων πρότερον* [97] *κρίνειν τὸ ψήφισμα, εἰ καλῶς ἔχει, καὶ οὕτως εἰσφέρεσθαι εἰς τὸν δῆμον. καὶ τοῦτο καλεῖται προβούλευμα.* And similarly we are told in the first argument to the oration against Androtion, that there was a law *μὴ πρότερον εἰς τὸν δῆμον ψήφισμα ἐκφέρειν, πρὶν ἐν τῇ βουλῇ δοκιμασθείη.* In the other argument to the same oration, we read: *ἐπειδὴ γὰρ πολὺς ἦν ὁ δῆμος, καὶ πολλάκις παρεκρούετο, μὴ νοῶν, εἰ ἔχει ἐμφωλεύουσαν κακουργίαν, (τὰ ψηφίσματα) πρῶτον παρεπέμπετο εἰς τὴν βουλὴν τῶν πεντακοσίων, καὶ αὕτη ἠρεύνα, εἰ ἔχει βλάβην τινα ἢ κακουργίαν, καὶ οὕτως εἰσήγετο εἰς τὸν δῆμον*[8]. This statement, I believe, is true in some cases, but does not hold universally. There seem, indeed, to have been two distinct classes of subjects which were submitted to the decision of the people in assembly. One comprised all those measures which it was the duty of the senate to

[5] Disquisit. de Epist. ac Proedr. § 7, p. 103.

[6] P. 399, and compare Æschines de Fals. Leg. p. 238.

[7] Bekker's Anecdot. I. p. 289.

[8] P. 587 and 591.

propose spontaneously,—measures, for instance, relating to war, peace, or confederacies: while the other consisted of all such matters as any private individual, on obtaining the permission of the senate, might be desirous of proposing to the people; as the presentation of any deserving citizen with the honour of a crown, a statue, or the privilege of *προεδρία*. In all these, and similar cases, the statement of the Grammarians is quite true, that no law could be presented for ratification by the people, without the previous approbation of the higher court, by which it assumed the form of *a decree of the senate*. For example, the proposal of Ctesiphon for crowning Demosthenes, is called a *προβούλευμα*[9]: so also is that made by Aristocrates for conferring a particular privilege on Charidemus[1]. All bills, then, of this latter class, after they had been approved by the senate, were proposed to the people, who determined, by vote, upon their ultimate adoption or rejection. But the case was different in the former class. Here there is no individual to present a measure to the senate for its approval: that body [98] of itself draws up its own bill, and proposes it to the people, with the question, whether or not they concur with it in its opinion of the measure presented to them? If they did so, there was no need of further discussion—the bill was a law. If they did not at once acquiesce, but demanded time for deliberation, any one who pleased was then at liberty to rise and address the assembly, and to propose any law, generally differing totally from the bill under consideration. Thus, to adduce examples, Xenophon[2] informs us that the Athenians were on a certain occasion deliberating on the terms of a treaty between themselves and the Lacedæmonians, and on the division between both parties of the command in their common wars. The se-

[9] Demosth. de Coron. p. 266.

[1] Id. adv. Aristocrat. p. 651.

[2] Xenoph. Hellen. vii. 1. 2. The event occurred Ol. 103, 1. Another example may be found in the same history, I. 7. 9, and 37, where Euryptolemus proposes a motion directly at variance with the bill of the senate.

nate had given it as its opinion, that the Athenians should have the precedency by sea, and the Lacedæmonians by land. This seems to many of the people a fair distribution; but one Cephisodotus rises, delivers a speech, and succeeds in persuading them that both parties should have alternate command by sea and land. A decree is accordingly drawn up to that effect, without the least regard being paid to the original proposal of the senate. A second instance occurs in Demosthenes[3]. In the Eubœan war, which the Athenians waged against the Thebans, the senate had voted that all the cavalry remaining in the city should be sent out to assist the forces then besieged at Tamynæ: a *προβούλευμα* is accordingly proposed to the people—the orators insist that the cavalry are not wanted, and persuade the people to that effect. The expedition is in consequence dropped, contrary to the wish of the senate. The object, therefore, of the law, which is adduced by the grammarians, *ἀπροβούλευτον* (or rather *ἄνευ προβουλεύματος*)[4] *μηδὲν ψήφισμα εἰσιέναι ἐν τῷ δήμῳ*, [99] seems to have been, not to provide that no psephisma should be proposed in the assembly unless previously approved by the senate, but that no subject should be presented to the people about which a bill of the senate had not been drawn up and read in assembly.

The bill of the senate was read by the crier in the assembly, immediately after the conclusion of the introductory ceremonies[5]. The Proedri then put the question to the people, "Whether they were willing to acquiesce in the proposal they had just heard read, or desired more time to deliberate upon it?" The people manifested their will by holding up their hands (*προχειροτονίᾳ*). Thus

[3] Contr. Mid. p. 567. The event here narrated refers to Ol. 105, 3.

[4] It is evident that the grammarians do not quote the actual letter of the law, but what they conceived from the words of its author to be the spirit of it. We may remark that this law was frequently violated. See Demosth. adv. Androt. p. 595. and the argument, p. 592.

[5] This may be inferred from Aristophanes, Thesmoph. v. 372. where the crier reads the decree passed by the "Senate of the Ladies."—Compare Demosth. de Fals. leg. p. 351. fin.

Harpocration explains the word[6]: ἔοικεν Ἀθήνῃσι τοιουτόν τι γίγνεσθαι· ὁπόταν τῆς βουλῆς προβουλευσάσης εἰσφέρηται εἰς τὸν δῆμον ἡ γνώμη, πρότερον γίνεται χειροτονία ἐν τῇ ἐκκλησίᾳ, πότερον δοκεῖ περὶ τῶν προβουλευσάντων (read, [with Photius] προβουλευθέντων) σκέψασθαι τὸν δῆμον, ἢ ἀρκεῖ τὸ προβούλευμα. The word is also used by Demosthenes, *in Timocrat.* where he says: προβούλευμ' ἐγράφη· μετὰ ταῦτα, γενομένης ἐκκλησίας, προὐχειροτόνησεν ὁ δῆμος[7]. In Æschines, however, the Proedri themselves, who put the question to the people, are said προχειροτονεῖν, *adv. Timarch.* p. 4. 10. ἐπειδὰν τὸ καθάρσιον περιενεχθῇ, καὶ ὁ κήρυξ τὰς πατρίους εὐχὰς εὔξηται, προχειροτονεῖν κελεύει (ὁ νόμος) τοὺς Προέδρους [100] περὶ ἱερῶν τῶν πατρίων καὶ κηρύκων καὶ πρεσβέων καὶ ὁσίων[8].

When the proposal of the senate had been approved by the people, the name of the person was added to the decree, who had declared, explained, and expatiated upon it, to the assembly. This appears to have been the duty either of one of the Proedri of the same tribe, or of the original applicant to the senate for permission to present it; although it is by no means improbable that this office sometimes devolved upon some other senator who was particularly distinguished for his oratorical powers. Besides this name, however, an additional formula was attached to the decree, γνώμῃ βουλῆς καὶ δήμου, or βουλῆς γνώμῃ, to intimate that it was not so much to be considered as having originated from the individual mentioned

[6] In v. προχειροτονία.

[7] P. 703.

[8] This passage is incapable of being explained in any other way. Wolf's interpretation, *in primis decernere*, is absurd. Jurinus is nearer the truth, *referre ad populum, decernendi potestatem facere*, provided it be understood of the decree of the senate. It may appear strange to some, that the word προχειροτονεῖν should bear the double signification both of *voting* and *allowing to vote:* but ἐπιχειροτονεῖν has nearly similar senses; viz. it is applied to the Prytanes giving the people permission to vote (Demosth. adv. Timocrat. p. 712. where see the note of Jurinus, and Valesius on Harpocration, p. 75.) as well as to the people adopting by their vote any proposed measure. (Dem. de Coron. p. 235. 261.)

therein as from the senate and people itself[9]. Examples of this may be found in Demosthenes, *de Coron.* p. 265. [10] *Ἄρχων Δημόνικος Φλυεὺς, Βοηδρομιῶνος ἕκτῃ μετ' εἰκάδα, γνώμῃ βουλῆς καὶ δήμου, Καλλίας Φρεάρριος εἶπεν, ὅτι δοκεῖ τῇ βουλῇ καὶ τῷ δήμῳ, στεφανῶσαι Ναυσικλέα, κ. τ. λ.*

Again, in the same page:

Εἶπε Καλλίας Φρεάρριος, Πρυτανέων λεγόντων, βουλῆς γνώμῃ· ἐπειδὴ Χαρίδημος—καὶ Διότιμος—ἐκ τῶν ἰδίων ἀναλωμάτων καθώπλισαν τοὺς νεανίσκους ἀσπίσιν ὀκτακοσίαις, δεδόχθαι τῇ βουλῇ καὶ τῷ δήμῳ, στεφανῶσαι Χαρίδημον καὶ Διότιμον, κ. τ. λ.

Callias, I imagine, had been commissioned by the Prytanes to propose to the people, by the authority of the senate, the motion for conferring the above honour on Charidemus and Diotimus.

[9] This is, I confess, but a conjecture, though not, I trust, devoid of some probability. There can be no doubt that *γνώμη βουλῆς* means the decree of the senate, to be proposed to the people. In an inscription in Gruter, we find (p. 405) *δεδόχθαι τῇ βουλῇ τοὺς λαχόντας προέδρους εἰς τὴν ἐπιοῦσαν ἐκκλησίαν χρηματίσαι περὶ τούτων, γνώμην δὲ συμβάλλεσθαι τῆς βουλῆς εἰς τὸν δῆμον, ὅτι δοκεῖ τῇ βουλῇ, στεφανῶσαι Εὔβουλον.* This is, indeed, a Delian decree, but it will serve to illustrate what I wish to establish, that the Proedri proposed in the assembly the *γνώμη βουλῆς.* And if the people concurred in the opinion of the senate, what could be more natural than that the decrees of the latter should be headed similarly to those which I have adduced from Demosthenes? The grounds of my assertion, that the above duty was sometimes entrusted to other senators by the Prytanes, are the words of the second decree:—*εἶπε Καλλίας, πρυτανέων λεγόντων, βουλῆς γνώμῃ.* But the formula was frequently altogether omitted, as in Demosth. de Coron. p. 235. Demosthenes, the proposer of the motion, was not only a senator at that time, but also one of the Prytanes. It is therefore scarcely credible that he should have proposed the motion, otherwise than by the authority of the senate. If my opinion on this point be correct, the formula must have been omitted either by the scribe who engrossed, or Demosthenes who copied, the decree. There is another example of a bill of the senate being proposed to the people by a certain orator who was a senator, but not one of the Prytanes, in Xenophon, Hellen. I. 7, 9: *ἡ βουλὴ ἐσήνεγκε τὴν ἑαυτῆς γνώμην, Καλλιξένου εἰπόντος, τήνδε, κ. τ. λ.* We find (ib. § 9) that Callixenus had recommended this motion to the senate; and yet it is evident from what follows that he was not one of the Prytanes (§ 14). It appears, therefore, to have been the custom that whoever got the *προβούλευμα* of the senate drawn up, should also propose it to the people in assembly.

A third instance occurs in p. 282:

Ἐπὶ Ἄρχοντος Ἡροπύθου, μηνὸς Ἐλαφηβολιῶνος ἕκτῃ φθίνοντος, φυλῆς πρυτανευούσης Ἐρεχθηΐδος, βουλῆς καὶ Στρατηγῶν γνώμῃ·——δεδόχθαι τῇ [102] *βουλῇ καὶ τῷ δήμῳ πέμπειν πρέσβεις, κ. τ. λ.*

Now, in this decree, the name of the person who recommended the measure is omitted: either because Demosthenes thought it superfluous to add it, or because the people at once, and without the particular recommendation of any person, ratified the bill of the senate when the question was put to them by the Proedri. As to the additional mention of the Strategi, I suspect that the reason is because they had taken part with the senate in convening the people and electing the ambassadors. Similarly in the next psephisma, p. 282: *Ἐπὶ Ἄρχοντος Ἡροπύθου, μηνὸς Μουνυχιῶνος ἕνῃ καὶ νέᾳ, Πολεμάρχου γνώμῃ,—δεδόχθαι τῇ βουλῇ καὶ τῷ δήμῳ, πέμψαι πρέσβεις, κ. τ. λ.* the words *Πολεμάρχου γνώμῃ* intimate that it was by authority of the Polemarch that the proposal for sending ambassadors was made to the people.

We have before remarked, that it was the office of the Proedri of the same tribe to see that the bill of the senate was read in the assembly, and to propose to the people the subject for consideration. Ulpian observes: *οἱ μὲν πρυτάνεις συνῆγον τὴν ἐκκλησίαν, οἱ δὲ Πρόεδροι ὑπέβαλλον, περὶ τίνος συνῆλθον.* Thus, when news was brought to Athens that Philip had occupied Elatæa, Demosthenes relates that the Prytanes laid before the people the information they had received, and produced the messenger who had been the author of it. In Andocides we find one Andromachus, a slave, produced by the Prytanes, to give some information about the profanation of the mysteries. In extraordinary assemblies, however, which were convened by the Strategi, the office of proposing the subject to the people belonged to them, as is clear from a decree in Demosthenes *de Coronâ: Ἐπὶ* [103] *Ἄρχοντος Νεοκλέους, μηνὸς Βοηδρομιῶνος, ἐκκλησίας συγκλήτου ὑπὸ Στρατηγῶν συναχθείσης, Εὔβουλος Μνησιθέου Κυθήριος*

εἶπεν· ἐπειδὴ προσήγγειλαν οἱ Στρατηγοὶ ἐν τῇ ἐκκλησίᾳ, κ. τ. λ.

We shall see hereafter that there were also cases in which the Thesmothetæ had this office to perform.

CHAPTER X.

On the Ῥήτορες, or Orators.

When the bill of the senate had been read, and the subject for consultation proposed to the people, if they desired further deliberation upon it, the crier, by proclamation, invited any one who pleased to rise and address the assembly. This privilege was not at Athens, as it was at Rome, exclusively confined to the magistrates, or to those deputed by them; but all were at liberty to speak, who fancied that they could offer any salutary advice, or propose any scheme conducive to the interests of the state, and at the same time explain and illustrate their ideas with graceful and impressive oratory. Demosthenes frequently alludes to this *ἰσηγορία*[1]: and Xenophon, though aware that it was on many grounds objectionable in itself, still contends that it is an indispensable privilege in a republic constituted like that of Athens[2].

[104] The Proedri, in giving permission to the people to declare their sentiments, are said λόγον, or *γνώμας προτιθέναι*[3]: and the common formula of invitation to do

[1] See Wolf, on Demosth. Leptin. p. 234.

[2] Xenoph. de Rep. Ath. i. 6. εἶποι δ' ἄν τις, ὡς ἐχρῆν αὐτοὺς μὴ ἐᾶν λέγειν πάντας ἐξῆς, μηδὲ βουλεύειν, ἀλλὰ τοὺς δεξιωτάτους καὶ ἄνδρας ἀρίστους· οἱ δὲ καὶ ἐν τούτῳ ἄριστα βουλεύονται, ἐῶντες καὶ τοὺς πονηροὺς λέγειν, κ. τ. λ. Instead of ἐξῆς, I would read ἐξ ἴσου.

[3] Æschin. de Fals. leg. p. 243. τῇ δ' ὑστεραίᾳ τοὺς προέδρους ἐπιψηφίζειν τὰς γνώμας, λόγον δὲ μὴ προτιθέναι. Ib. p. 244. λόγαν γὰρ μὴ προτεθέντων. Xenoph. Memor. iv. 2. 3. τῆς πόλεως λόγον περὶ τινὸς προτιθείσης. Thucyd. vi. 14. Καὶ σὺ, ὦ Πρύτανι, γνώμας προτίθει αὖθις Ἀθηναίοις. Demosthenes, or rather the unknown author of the oration περὶ συντάξεως, p. 169. expresses the same thing more at length: προθεῖναι περὶ τούτων τῷ βουλο-

so was, *τίς ἀγορεύειν βούλεται*; According, however, to the ancient institution of Solon, those who were above fifty years old were to be called upon first, [105] and afterwards any of the rest who were qualified to speak. But this custom had long become obsolete[4]; and young men scarcely out of their teens, with a very diminutive stock of knowledge, but a very considerable one of impudence, were generally the first to take possession of the bema, and not unfrequently the last to give it up to their betters[5].

μένῳ γνώμην ἀποφήνασθαι. De Coron. p. 317. *ἐν κοινῷ δὲ τὸ σύμφερον ἡ πόλις προὐτίθει σκοπεῖν.* See also Thucyd. iii. 38. 42. Isocrat. Social. p. 382. Aristophanes uses the expression *γνώμας καθιέναι* in the same sense, Eccles. 397.

Ἔδοξε τοῖς πρυτάνεσι περὶ σωτηρίας
γνώμας καθεῖναι τῆς πόλεως,

unless we should read *προθεῖναι.* Libanius, Decl. xvi. p. 466. B. has *ἐκκλησίαν προτιθέναι,* though, as far as I am aware, the ancient writers never make use of that phrase: *προγράφειν ἐκκλησίαν* is the legitimate term. In Demosthenes, Phil. I. init. we read *εἰ μὲν περὶ καινοῦ τινὸς πράγματος προὐτίθετο λέγειν*: where the word *προὐτίθετο,* as Ulpian informs us, has been taken by some for *προεγράφετο,* by others for *προεβάλλετο.* Either explanation may be correct; for though *προτιθέναι* generally means simply *to give permission to speak,* yet it has been rightly thought (Hemsterhus. ad Lucian. Necyomant. vol. iii. p. 361. Bipont.) that these expressions have been borrowed from the custom of the Prytanes setting forth a program, by which not only notice was given that an assembly was to be held, but also information about the subjects which were to be discussed and put to the vote there. Yet it must be confessed that in many places this original signification of the word has been entirely lost, as in Thucyd. vi. 14. with which compare Demosthenes de Fals. leg. p. 361. *τὴν ἐναντίαν ποτὲ Θηβαίοις ψῆφον ἔθεντο οὗτοι περὶ ὑμῶν ὑπὲρ ἀνδραποδισμοῦ προτεθεῖσαν.* Sophocl. Antig. v. 165. *σύγκλητον τήνδε γερόντων προὔθετο λέσχην κοινῷ κηρύγματι πέμψας,* which passage has been also quoted by Hemsterhus. Compare also Xenoph. Hellen. i. 7. 5. 14. 15.

[4] Demosth. de Coron. p. 285. Æschin. adv. Ctesiph. p. 386. adv. Timarch. p. 48, 49; Plutarch, "An seni sit ger. respubl." p. 784. c. Opp. Tom. ii. Compare Aristoph. Acharn. v. 45; Thesmoph. v. 385; Eccles. v. 130. Lucian has a witty allusion to this custom, Deor. conc. i. p. 178. vol. ix. Bipont. and Jov. Tragœd. 18. p. 245. tom. vi. where *οἱ τέλειοι θεοὶ* mean those gods whom they represented of mature age, and not in youth. Another signification of *τέλειοι θεοὶ* is illustrated by Ruhnken on Timæus, p. 225.

[5] Andocides complains of this, contr. Alcibiad. p. 123. R. 32. 4. Steph. Compare a fragment of Thrasymachus in Dionys. Halicarn. *περὶ τῆς Δημοσθ.*

No one, provided he had been enrolled among the men, was disqualified by age for speaking. Of this Petit was aware, and he takes as an instance to prove it, the fact that Plato spoke in *court* at the age of twenty-three[6]. This, however, is no proof that he could also have done so in the *assembly* at that age. He might have referred with greater propriety to the case of Alcibiades, who was a demagogue some years before he attained the age of thirty[7], and seems to have become a statesman[8] as early as Ol. lxxxviii. 3. at which time [106] he could scarcely have been twenty-five, if we follow Dodwell, or, according to others, scarcely twenty-one[9]. But the fact is capable of a much easier proof. We are told by Xenophon, that Glaucon, the son of Ariston, became a statesman before twenty, and frequently rose to address the people in the assemblies. And we are moreover told in a manner which makes it evident, that there was no law to the contrary then in existence[1].

δεινοτ. p. 165. Sylb. It is clear too from a passage in Lysias, pro Mantith. p. 585. R. 147. 35. Steph. that those who attempted to speak in the assembly at too early an age, incurred the reprehension of the more prudent :—ἤδη δέ τινων ἠσθόμην, ὦ βουλὴ, καὶ διὰ ταῦτα ἀχθομένων μοι, ὅτι νεώτερος ὢν ἐπεχείρησα λέγειν ἐν τῷ δήμῳ.

[6] Leg. Att. p. 291.

[7] Duker ad Thucyd. v. c. 43.

[8] For in that year the Acharnenses of Aristophanes was exhibited: in which play (v. 716.) allusion is made to Alcibiades.

[9] Dodwell (Annal. Thucyd. ad ann. xiii. bell. Pelop. p. 682. ed Baver) supposes Alcibiades to have been Ol. lxxxii. $\frac{3}{4}$, and Wolf (ad Demosth. Leptin. p. 336.) agrees with him. If however Nepos is correct in stating that he was killed about the age of forty (Vit. Alcib. c. 10.), and the date of his death is Ol. xciv. 2. according to Diodorus, lib. xiv. he must have been born about Ol. lxxxiii. 3. and not quite twenty-one, Ol. lxxxviii. 3. [But see Clinton, B. C. 404.]

[1] Memorab. iii. 6. 1. The Scholiast indeed of Aristophanes, Nub. v. 530. mentions a law μὴ εἰσελθεῖν τινα εἰπεῖν, μήπω τεσσαράκοντα ἔτη γεγονότα, ὡς δέ τινες, τριάκοντα. However we understand this law, whether (with Petit) of the theatre, or (with Palmer and Wesseling ad Petit) of the assembly, the statement is false. Petit himself, p. 344, either adopts his former explanation, or forgets himself and interprets the passage as referring to the public appointment of the orators, about which we shall have occasion to speak shortly. It is by no means a new or unexampled thing for these

The most common expressions applied to those who rose to speak, are *ἀνίστασθαι, παριέναι ἐπὶ τὸ βῆμα, προσιέναι τῷ δήμῳ, πρόοδον, πάροδον, πρόσοδον ποιεῖσθαι, ἀναβαίνειν εἰς τὸ πλῆθος*, and others; and the speakers are sometimes simply called *οἱ παριόντες*[2].

[107] Though the privilege of speaking was, as we have seen, conferred upon all thus indiscriminately, yet advantage was taken of it by few but those who excelled in eloquence, and had been regularly trained for the profession in the schools of the Rhetoricians. This was at least the case in those times when the study of eloquence had been carried to a great height, and the citizens were become accustomed to elaborate and polished orations. Thus it frequently happened, that not the most competent politicians, but the most practised orators, carried the day, and drew the deluded multitude whichever way they pleased. In the good old times it was an invariable consequence, that those who had distinguished themselves in their generalship abroad, had the greatest influence with the people at home, and were always listened to in assembly with the most respect and attention, even though destitute of the refined phrase of the modern orator[3]. But it was far otherwise in later times, when, instead of a Miltiades, a Themistocles, a Myronides, and similar characters, such men as the Eubuli, Æschines, and Demades, whose tongue was their only recommendation, became the influential demagogues of the day. And hence we find that the orators are frequently distinguished by the ancient writers from the rest of the citizens, who, not being accomplished in the art of speaking, seldom rose to address the assembly. But Petit and his

Greek commentators to invent laws which never existed,—for instance that in the Schol. ad Ran. v. 420. which the unsuspecting Petit quotes as authentic, p. 205.

[2] Xenoph. Mem. iii. 7. 1; Demosth. de coron. p. 285; Æschin. adv. Timarch. p. 85; Plato, Apolog. p. 31. c. Andocides de red. suo, p. 19. 36; Steph. Cf. Hemsterhus. ad Lucian, vol. i. p. 219. Bipont.

[3] Cf. Aristot. Polit. v. c. 5. and the excellent exposition of Heeren, Ideen, tom. iii. p. 386. seqq.

followers are deceived in supposing that there was a certain *set* or *class* of orators, and that ten were elected every year by the people, under the name of *ῥήτορες* or *συνήγοροι*, for the purpose, I presume, of being always in readiness to make a speech in the assembly, at a moment's notice, [108] on any subject whatever which might require instant deliberation[4].

To these ten orators, or *συνήγοροι*, Petit thinks all those passages are to be referred in which mention is made of the laws concerning orators and their *δοκιμασία*. As he is unquestionably mistaken, it may be worth while to examine somewhat at length the grounds on which he thinks his opinion capable of proof. The origin of it is the observation of the Scholiast on the Vespæ of Aristophanes, v. 689.

αὐτὸς δὲ φέρει τὸ συνηγορικὸν δραχμὴν, κἂν ὕστερος ἔλθῃ·

on which that commentator remarks: *ὑπὲρ τοῦ συνηγορῆσαι, ἐλάμβανον γὰρ οἱ ῥήτορες δραχμὴν, ὅτε συνηγόρουν ὑπὲρ τῆς πόλεως ἢ ὑπὲρ ἄλλου τινός. ἐκ τούτου δὲ φαίνεται, ὅτι μισθοφόρος ἦν ἡ ἀρχή. κληρωτοὺς δὲ γενομένους δέκα συνηγόρους Ἀριστοτέλης φησίν.* It is a thing evidently absurd, to elect by the chance of a lottery men who are designed to guide the consultations of the people by their prudence and foresight, or to plead a public cause in a trial. The Scholiast confuses things which have no connection. The ten *συνήγοροι κληρωτοὶ* mentioned by Aristotle, are no doubt the same as those alluded to by the unknown author of Lexicon Rhetoricum, published by Bekker: *Ἄρχοντες ἦσαν κληρωτοὶ, οἵ τοῖς λογισταῖς ἐβοήθουν πρὸς τὰς εὐθύνας τῶν ἀρξάντων τινὰ ἀρχήν*[5]. These, however, are very different from

[4] Petit, Leg. Att. iii. 3. p. 344. Thus, as I have observed, the opinion of Petit has been interpreted by Heeren, p. 397. extr. 398 init. Bekker, Demosth. als Staatsm. u. Redner. ii. p. 500. seq. and, long before the two last, Perizon. ad Ælian, V. Hist. v. 13. n. 5. p. 323. b. ed. Lips.

[5] Anecdot. i. p. 301. Cf. Aristot. Polit. vi. 8:—*ἀναγκαῖον, ἑτέραν εἶναι (ἀρχὴν) τὴν ληψομένην λογισμὸν καὶ προσευθυνοῦσαν, αὐτὴν μηδὲν διαχειρίζουσαν ἕτερον. καλοῦσι δὲ τούτους οἱ μὲν εὐθύνους, οἱ δὲ λογιστὰς, οἱ δὲ συνηγόρους.*

those advocates called *συνήγοροι*, who used either to plead before the judges public causes committed to them by the people, or be [109] employed by private persons: *συνηγόρουν ὑπὲρ τῆς πόλεως ἢ ὑπὲρ ἄλλου τινός*, to use the words of the Scholiast on Aristophanes. Those who pleaded public causes, were appointed not by lot but by a show of hands, as Harpocration tells us[6]; and the above Scholiast further informs us, that they received for pay a drachma,—a statement which he has simply taken from the passage itself of Aristophanes; though which of the two kinds of *συνήγοροι* are meant by the poet, is uncertain. Neither, however, of these has any thing whatever to do with those orators who spoke in the assemblies, and who are called simply *ῥήτορες*, *δημήγοροι*, or, if possessed of great influence with the people, *δημαγωγοὶ*, but never *συνήγοροι*[7]. They were neither paid nor appointed by the people, but voluntarily assumed a share in state-affairs, through confidence that they were sufficiently eloquent, experienced, and wise, to be competent for the task[8].

But, urges Petit, the orators are expressly distinguished from the private citizens (*ἰδιῶται*) in Æschines: *τρίτον δὲ ἐφεξῆς, (διέξειμι πρὸς ὑμᾶς τοὺς νόμους) τοὺς*

Upon the whole subject of this office see Boeckh, Staatshaus. d. Ath. i. p. 203—207.

[6] In v. *συνήγοροι*. *Εοίκασι παρὰ Ἀθηναίοις τινες χειροτονεῖσθαι συνήγοροι ἐπὶ τῷ συναγορεύειν*. Compare Suidas in v. These *συνήγοροι* were those who conducted prosecutions in public causes. They were appointed by the people, and are frequently mentioned (See Herald. Animadv. in Salmas. p. 234.). They also had to undertake the defence of any ancient laws, which might be attempted to be abrogated, in the court of the Nomothetæ. Demosthenes speaks of them, adv. Timocrat. p. 711. Of both kinds we shall treat more fully in Book II.

[7] A distinction is made by Aristophanes (Nub. v. 1085. 1089.) between *δημαγωγοὶ* and *συνήγοροι*. In Xenophon (Memorab. ii. 6. 15.) *ῥήτορες* and *δημήγοροι* are combined. These are the *σύμβουλοι τῆς πόλεως* mentioned in Æschines, adv. Timarch. p. 135. de Fals. leg, p. 322.

[8] It was thought, with reason, the most disgraceful conduct to refuse advice to the state unless for money: *αἰσχρὸν νενόμισται, μὴ φάναι συμβουλεύειν, ἐὰν μή τις αὐτῷ ἀργύριον διδῷ*. Plat. Gorg. p. 520. c.

περὶ τῶν ἄλλων ἡλικιῶν, οὐ μόνον περὶ τῶν ἰδιωτῶν, ἀλλὰ καὶ περὶ τῶν ῥητόρων. Here however the ἰδιῶται [110] are not opposed to the orators, as private persons to those who hold any public offices, but as retired and unobtrusive citizens to those who engage actively in state affairs; and this sense of the word is sanctioned by the frequent usage of the best authors[9].

The mention made in Æschines of the δοκιμασία τῶν ῥητόρων is insufficient to prove even the public appointment of the orators. For the word δοκιμασία not only means a scrutiny into the conduct of those who are elected by lot or by the vote of the people to hold any public office, and who, before entering upon the duties of that office, are subjected to a certain investigation, and liable to be objected to, as unfit, by any one that pleases; but it also implies the accusation and trial of any person who has interfered in state affairs (whether by public appointment or otherwise), but, for having lived a disreputable life, or some other cause, is deemed worthy of being excluded from further participation in the management of them[1].

There were many laws for restraining and checking the unlimited permission given to the people to harangue their fellow-citizens in assembly. [111] There were laws by which this privilege could be entirely suspended, in

[9] Thus, for instance, in Æschines, adv. Timarch. p. 164. οὐκ ὢν ἰδιώτης ἀλλὰ πρὸς τὰ κοινὰ προσιών. Ibid. p. 184. οἱ ἰδιωτεύοντες are opposed to οἱ πολιτευόμενοι. In the oration against Ctesiphon, p. 516. the senators themselves are called ἰδιῶται. Compare also p. 609. In Demosth. adv. Androt. p. 601. οἱ ἰδιῶται are opposed τοῖς θράσεσι καὶ δυνάτοις λέγειν. Xenoph. Memorab. iii. 7. 7. ἰδιῶται and ἀσκητοί. And numberless similar instances might be adduced.

[1] Harpocrat. in v. δοκιμασθείς. ἐλέγετο δὲ (δοκιμασθῆναι) καὶ ἐπὶ τῶν πολιτευομένων, κἂν μήδ' ἡντινοῦν ἀρχὴν ἦρχον· ἐξητάζετο γὰρ αὐτῶν ὁ βίος ἐνίοτε, ὡς Αἰσχίνης ἐν τῷ κατὰ Τιμάρχου φησὶ. κ. τ. λ. The passage in Æschines is adv. Timarch. p. 28. ἐπήγγειλα αὐτῷ τὴν δοκιμασίαν ταυτηνί. Ulpian. ad Demosth. or. adv. Androt. p. 388. 43. Benen. ἐπαγγελία δὲ ἐστὶ δίκη πρὸς δοκιμασίαν τοῦ βίου. See Suid. in v. δοκιμασία. and Kuster in loc.

case of a person being convicted of any grievous offence, or found destitute of those qualifications which the wise legislators deemed necessary for all who aspired to guide by their counsels, or influence by their authority, the rest of the people. In the first place, all who were ἄτιμοι (of whom we have before spoken) lost not only their vote, but, *à fortiori*, their ἰσηγορία. Hence Æschines[2], in referring to these laws, observes: ἐάν τις λέγῃ ἐν τῷ δήμῳ τὸν πάτερα τύπτων ἢ τὴν μητέρα, ἢ μὴ τρέφων, ἢ μὴ παρέχων οἴκησιν,—ἢ τὰς στρατείας μὴ ἐστρατευμένος ὅσαι ἂν αὐτῷ προσταχθῶσιν, ἢ τὴν ἀσπίδα ἀποβεβληκὼς —ἢ πεπορνευμένος ἢ ἡταιρηκὼς—ἢ τὰ πατρῷα κατεδηδοκὼς, ἢ ὧν ἂν κληρονόμος γένηται—δοκιμασίαν ἐπαγγειλάτω Ἀθηναίων ὁ βουλόμενος, οἷς ἔξεστιν. All these, who are specified in the above law, were deprived, upon conviction, of the privilege of both voting and speaking in assembly, with all the rest of their public rights; they were, in short, ἄτιμοι, and could not so much as enter any assembly, or take a part in any festival or religious ceremony. If any one attempted to enter where he had no right, he was imprisoned by the Eleven, and brought up for trial before the court of the Heliæa, where any one who pleased might be his accuser[3].

Andocides states[4], that after the time of the thirty Tyrants, many who had embraced their party, were punished in the following manner. Some were debarred from the privilege of speaking in the assembly, some lost their qualification to be chosen senators, and others were prohibited from pleading public causes (γραφαὶ) in the courts. Yet their vote was not taken away, nor [112] were any other of their civil rights suspended. I am, however, inclined to suppose this a solitary instance, peculiar to the time of which Æschines speaks:—at all events I am not aware of mention being made in other authors of this ἀτιμία κατὰ προστάξεις.

[2] Adv. Timarch. p. 54.

[3] Demosth. adv. Timocrat. p. 733. See above, chap. 8.

[4] De Myster. p. 35. R. 10. 24. Steph.

Those also who were debtors to the treasury on account of not having paid a fine which they had incurred by sentence of the law, or in any other manner, were ἄτιμοι till it had been discharged, and as such were excluded from the assemblies and the use of the bema. The same also was the case with those who had been imprisoned for some atrocious offence, whose fathers had been punished with death, or who had been rejected in the scrutiny (δοκιμασία) when about to hold any public office[5]. And if any such still persisted in their endeavours to intrude themselves into a share in the administration of the state, information could be laid against them by any citizen, by a process called ἔνδειξις[6], before the Thesmothetæ.

But the laws did not only require the negative qualification of not being charged with any serious offence: their demand was, that all who aspired to the confidence of the people, and the enjoyment of influence in the state, [113] should have contracted no illegal marriage, and should be possessed of a certain quantity of landed property within Attica. A law to this effect is quoted by Dinarchus[7], although in such a manner as to leave it

[5] Orat. i. adv. Aristogit. p. 779.

[6] Harpocrat. in v. Lex. Rhetor. in Bekker's Anecdota, i. p. 250. and others. Compare also Demosth. adv. Timocr. p. 707. where mention is made of a writ of ἔνδειξις being brought before the Thesmothetæ. The most celebrated instances of ἔνδειξις are Demosth. adv. Aristogiton. (quoted by Harpocration) and adv. Theocrin. Pollux (viii. 49.) tells us that this ἔνδειξις was properly brought before the Archon Eponymus: but it seems probable that the case was different in different causes. The author of the Rhetorical Lexicon states that ἔνδειξις was referred to the Eleven: but he appears to have confounded it with ἀπαγωγή (See Harpocrat. in v. ἄπαγε, and Pollux, viii. 49.) We have not however room to discuss this at greater length at present, nor indeed does it come under the subject of which we are treating. The difference between ἔνδειξις and ἐπαγγελία is this: that the former was an action against those who were *convicted*, for having acted in some case in which they had been, for any crime, disqualified to interfere: the latter applied to those who were *accused* then for the first time.

[7] Dinarchus, in Demosth. p. 51. R. (99. 15.) τοὺς μὲν νόμους προλέγειν τῷ ῥήτορι, καὶ τῷ στρατηγῷ, τὴν παρὰ τοῦ δήμου πίστιν ἀξιοῦντι λαμβάνειν, παιδοποιεῖσθαι κατὰ τοὺς νόμους, γῆν ἐντὸς ὅρων κεκτῆσθαι.

doubtful whether it applies to *all* who spoke at the assembly, or whether the words τῷ ῥήτορι τὴν παρὰ τοῦ δήμου πίστιν ἀξιοῦντι λαβεῖν do not rather imply those who are desirous of obtaining from the people some public office or post, as that of ambassador, advocate in a public cause, or similar honourable distinction. The probability of the latter being meant is increased by the consideration that the poor, who possessed no property in land, were by no means precluded from the privilege of speaking. For Æschines tells us that not even the working artisans were deprived of it[8].

When any person arose to speak[9], he put on his head a crown, composed probably of myrtle, and resembling those which some magistrates, the Archons for instance, wore as the badge of their office, and which were considered so sacred, that if any one insulted them by word or deed when they had them on, he was liable to the severest kind of ἀτιμία. By the same principle, the orators, when they addressed the assembly, were considered, at least during the time of speaking, as the representatives of the people, and, as such, inviolable, of which the crown was a token[1]. In speaking, [114] the orator's chief

[8] Adv. Timarch. p. 54.

[9] We may infer from Aristoph. Acharn. v. 46. that if any one arose to speak, who was not publicly known, he had to give in his name first to the crier.

[1] See Demosthen. in Mid. p. 524. 525. where the words οὐ μόνον περὶ τούτων οὕτω ταῦτ' ἔχει, ἀλλὰ καὶ περὶ πάντων, εἷς ἂν ἡ πόλις τινὰ ἄδειαν, ἢ στεφανηφορίαν, ἢ τινὰ τιμὴν δῷ should undoubtedly be understood to include the orators. The custom of the latter wearing crowns is well known from Aristophanes, Eccles. 130. 147. 163. 171. Thesmoph. 381. where the observation of the Scholiast is not to be attended to. See Paschal. de coron. v. 5. To the same custom Aristophanes again alludes, Aves v. 463.

φέρε παῖ στέφανον· καταχεῖσθαι
κατὰ χειρὸς ὕδωρ φερέτω ταχύ τις.

In this passage Pisthetærus, being about to deliver his sentiments in the assembly of the birds about founding a new city, asks for a crown, as if going to harangue in a real Attic assembly. But some commentators have found a difficulty in the additional mention of *water* to pour on the hands. There is no doubt that this alludes entirely to the prevalent custom at convivial meetings, and must not be referred to the assembly. The point of the whole

attention was directed towards keeping within the limits of the subject which had been proposed for consideration by the Proedri, or notified in the program. It was likewise requisite for him to confine himself strictly to the discussion of one thing at once, and, when discussed, to avoid recurring to it again. [115] A general provision was also made by law, that no one should indulge in seditious language or scurrilous abuse against individuals; no one interrupt the orators or the Proedri in the performance of their duties, nor offer violence to the Chairman. The offenders in these respects were fined fifty drachmæ by the Proedri; or, if thought to deserve severer punishment, were brought up to have sentence passed on them by the senate, or the people at the next assembly[2].

passage is this: Pisthetærus endeavours to entrap his birds (just as the Athenian demagogues did *τὴν Κεχηναίων πόλιν*) by great promises and magnificent expectations, and, as it were, *pledges* them in a cup sweetened on purpose to please and cajole them. To this we must refer, v. 462. *καὶ προπεφύραται λόγος εἰς μοι, ὃν διαμάττειν οὐ κωλύει*, and also v. 465. *λέγειν ζητῶ τὶ πάλαι μέγα καὶ λαρινὸν ἔπος τι. Λαρινὸς* is properly applied to *fat beef*. Now Aristophanes makes Pisthetærus say all this under the character of a sort of *λόγων ἑστιάτωρ*, for it was an expression by no means uncommon among the Greeks, *ἑστιᾶν τινὰ λόγοις*. Lucian. Philopseud. c. 39. p. 292. vol. vii. Bip. *εἱστίων αὐτοὺς καὶ ἐνεφοροῦντο τῶν ψευσμάτων*. Cf. Lapith. c. 2. p. 46. vol. ix. Plat. Rep. ix. p. 239. and elsewhere. We may also add the proverb "*λευκὴν μᾶζαν φύρω σοι*," *ἐπὶ τῶν μεγάλα ὑπισχνουμένων*, according to the explanation of Hesychius. Such a mental banquet, then, where the guests have nothing to eat but words and promises, is alluded to by Aristophanes under the form of one of a more substantial description; whence he adds the mention of water for the hands to that of the crown, which was used by the guests at a banquet as well as by the orators in an assembly. This two-fold use of a crown furnishes occasion for another joke of Aristophanes, Eccles. v. 132.

[2] The above laws are preserved by Æschines adv. Timarch. p. 59—63, (5. 35.), a passage, which, as it is at present obscured by false punctuation and various corruptions, I will transcribe as I conceive it ought to be read. *Τῶν Ῥητόρων ἐάν τις λέγῃ ἐν βουλῇ ἢ ἐν δήμῳ μὴ περὶ τοῦ εἰσφερομένου ἢ μὴ χωρὶς περὶ ἑκάστου, ἢ δὶς περὶ τοῦ αὐτοῦ* (gloss. *ὁ αὐτὸς τοῖς αὐτοῖς δηλονότι*) *ἢ λοιδορῆται ἢ κακῶς ἀγορεύῃ τινα, ἢ ὑποκρούῃ, ἢ χρηματίζοντων μεταξὺ ἀνεστηκὼς λέγῃ περὶ τῶν μὴ ἐπὶ τοῦ βήματος, ἢ παρακελεύηται, ἢ ἕλκῃ τὸν Ἐπιστάτην, ἀφειμένης τῆς ἐκκλησίας ἢ τῆς βουλῆς κυριευέτωσαν οἱ Πρόεδροι, ἐπιβαλόντες μέχρι πεντήκοντα δραχμῶν ἐγγράφειν τοῖς Πράκτορσιν. ἐὰν δὲ πλέονος*

[116] These salutary laws, however, were neglected and almost forgotten in the times of Aristophanes and the orators. Nothing was then more common than to hear the mutual abuse of the speakers, the interruptions, confusion, shouts, and reproaches of contending parties[3]. In earlier times, the modesty of those who ventured to speak was extreme, and manifested not only by the tone of voice and general appearance, but by every motion and gesture of the body. "The orators of old," (says Æschines) "Pericles, Themistocles, and Aristides, were so modest, that they considered the present prevailing custom of exposing

ἄξιος ᾖ ζημίας, εἰσφερέτωσαν εἰς τὴν βουλὴν ἢ εἰς τὴν πρώτην ἐκκλησίαν.—Ἐν τῷ βουλευτηρίῳ, ὅταν διεξίωσι κλήσεις, κρινάτωσαν· καὶ ἐὰν καταγνωσθῇ αὐτοῦ, κρύβδην ψηφιζομένων τῶν βουλευτῶν, ἐγγραψάτωσαν οἱ Πρόεδροι τοῖς Πράκτορσιν. I have restored (*a*) μὴ περὶ τοῦ εἰσφερομένου, which the sense and construction of the passage appears to require. (*b*) ἢ μὴ χωρὶς περὶ ἑκάστου, with Matthiæ, De Judic. Athen. in Miscell. Philolog. P. 3. p. 233. (*c*) ἀνεστηκὼς for the common reading ἀνηκέστως with Brunck on Arist. Eccles. v. 293. because I am unable to defend the expression ἀνηκέστως λέγειν by a single similar instance; for ἀνήκεστα ποιεῖν, πάσχειν, which Hieronymus Wolf has compared, are not to the purpose, and what Reiske has adduced is mere trifling. Besides, even supposing the phrase ἀνηκέστως λέγειν could be supported by examples, yet I think the analogy of similar expressions requires it to be ἀνηκέστως λέγειν τινὰ, and not περὶ τινός. Lastly, the words κακῶς ἀγορεύειν and λοιδορεῖσθαι have occurred before. (*d*) In what follows I have adopted the emendations of Matthiæ, except that instead of ἐπιγράφειν, I have written ἐγγράφειν, τοῖς Πράκτορσιν, because the latter verb is very commonly found in this sense; and have a little further on retained the common reading διεξίωσι κλήσεις, for which Matthiæ would write διεξίωσιν αἱ κλήσεις. The meaning of the words λέγῃ περὶ τῶν μὴ ἐπὶ τοῦ βήματος I confess I do not understand. Some explain them to signify "the subjects not under discussion by the orators;" others, "the persons not on the bema;" i. e. of those tribes which are not sitting there. Neither explanation satisfies me. Perhaps something is lost. I interpret παρακελεύεσθαι to mean "to raise seditious clamours:"—for instance, to insist that the Proedri should propose this or that subject to the people. That it was not allowed to speak upon any other subject than that proposed by the Proedri is exceedingly probable, and may also be inferred from Demosthenes, adv. Timocr. p. 715. οὐ προτεθέντος οὐδενὸς περὶ τούτων. And Æschines shews, adv. Ctesiph. p. 383. that it was forbidden to discuss more than one thing at once.

[3] Vid. Æschin. adv. Timarch. p. 57; Demosth. de Fals. leg. p. 348. adv. Timocrat. p. 704; Aristoph. Eccl. v. 142, 248, 256.

the arm in speaking a mark of impudence, and declined, through a sense of propriety, to adopt it[4]."

CHAPTER XI.

On Voting.

[117] When the question under consideration had been sufficiently canvassed and discussed by the orators, any one of them who pleased might propose a decree. Some, indeed, are of opinion[1] that none could do this but one of the Proedri, nominated for that purpose by the senate, and usually mentioned at the head of the decree. Thus, when we read *Κτησιφῶν Λεωσθένους Ἀναφλύστιος εἶπεν*, these persons suppose that Ctesiphon was one of the Proedri of different tribes, who by command of the senate proposed the decree to the people. This opinion, however, I have no hesitation in declaring false. Those who hold it are in the first place wrong in supposing that no decree could be proposed except the previous bill of the senate (*προβούλευμα*); for I have before shewn[2], and shortly will do so still more fully, that the case is certainly otherwise. They are again mistaken on the subject of these bills of the senate. We have before observed that they were either drawn up by a private individual, and presented by him (on obtaining permission[3] to do so) to

[4] Adv. Timarch. p. 52. where the Scholiast remarks: *λέγεται δὲ Κλέων ὁ δημαγωγὸς πρῶτος παραβὰς τὸ ἐξ ἔθους σχῆμα, περιζωσάμενος (cum subligaculo) δημηγορεῖν*:—a piece of information which he appears to have derived from Plutarch, Nicias, c. 8; Tiberius Gracchus, c. 2. Among the Romans too the more modest orator used to keep his arm within his robe, as we are told by Quinctilian, xi. 3, 138.

[1] Biagi de Decret. Ath. c. 13, § 11.

[2] See chap. 9, p. 102.

[3] Those who applied for permission to have access to the senate and leave to propose a motion, which was done by a written petition, were said *προσόδον ἀπογράψασθαι*, or *γράψασθαι*. Hemst. ad Lucian, vol i. p. 219, Bip. *Ἀπογράψασθαι*, to petition by writing, is used by Plutarch, in the Life of the Ten Orators, p. 851, F. *Λυκόφρων Λυκούργου Βουτάδης ἀπεγράψατο αὐτῷ εἶναι σίτησιν ἐν πρυτανείῳ.*

the senate for its approbation; or else devised and composed by the senate itself. In the former case, without doubt, those who drew up the bills had also to recommend them to the people in assembly, and had their names attached as having been the authors of them. [118] In the latter case, however, I suspect that it was the office of the Proedri of the same tribe to present and recommend, or *second* the motion by a suitable address to the people. Yet I conceive that this office was not exclusively appropriated to them, but that any senator might be commissioned to perform it: and the name of the individual who did so, whether senator or Proedrus, was attached to the beginning of the decree. But as, after the show of hands (*προχειροτονία*) any one who pleased might rise and deliver his sentiments from the bema; and as decrees were often drawn up completely at variance with the opinions of the senate, it is incredible that any other name than that of the author and supporter of them should be attached to such decrees.

Those who intended to offer a decree of this kind to the notice of the people, either brought it with them ready drawn up[4], or drew it up by the assistance of a public scribe actually in the assembly: whence Plato speaks of *οἱ ἐν τῷ δήμῳ συγγραφόμενοι*[5]. The decree, when drawn up, was handed over to the Proedri[6], [119]

[4] Of which an example may be found in Æschines de Fals. Leg. p. 243, 245.

[5] Plat. Gorg. p. 451, b.; Phædr. p. 258, a. Compare Andocid. de Myster. p. 13, 3, Steph.; Aristoph. Thesmophor. v. 439. Hence we must explain what Demosthenes (or rather Hegesippus) says, Or. de Halones. p. 88: *ὑπόλοιπόν μοί ἐστιν ἔτι, πρὸς ταύτην τὴν ἐπιστολὴν τὴν εὖ ἔχουσαν, καὶ τοὺς λόγους τῶν πρέσβεων, γράψαι τὴν ἀπόκρισιν.* The following expressions are of frequent occurrence: *ψήφισμα* or *γνώμην γράφειν*, Æschin. adv. Ctesiph. p. 384. and Taylor in loc.—*γνώμην εἰπεῖν, εἰσηγεῖσθαι*, Plutarch, Pericl. c. 13.—*γνώμην* or *ψήφισμα διδόναι*, Æschin. adv. Ctesiphont. p. 490; Demosth. adv. Timocrat. p. 704, &c.

[6] Æschin. de Fals. leg. p. 260. *Ἀλεξίμαχος ὁ Πήληξ δίδωσιν ἀναγνῶναι ψήφισμα τοῖς προέδροις.* We learn from what he says, p. 245, viz. that Demosthenes shewed a decree which had been drawn up by himself to Amyntor, and asked his advice whether the scribe should give it to the Proedri for their appro-

that, having taken into consultation with them the *νομοφύλακες*[7], they might examine whether anything was contained in it either contrary to the existing laws or injurious to the interests of the state. If the majority of them agreed that nothing objectionable was to be found, it was was publicly read by the crier[8]. Yet even after this the Chairman of the Proedri could interfere, and refuse to let the people vote on the question. In this case they could proceed no further, unless by their threats and clamours they succeeded in making him withdraw his objection[9]. Any private citizen whatever could interfere with similar effect, upon engaging on oath to prosecute the author of the measure by a writ called *γραφὴ παρανόμων*. To take this oath was termed [1] *ὑπόμνυσθαι*. [120] Lastly, it was in the power of the author himself to withdraw his measure, as Plutarch tells us Aristides did on one occasion[2].

bation; that the scribe was the medium by which the decree was transmitted to the Proedri. The words of Æschines, *εἰ δῷ τῷ γραμματεῖ, ἐπιψηφίζεσθαι τοῖς προέδροις*, are obscure, from their brevity. To complete the construction we may add to *τῷ γραμματεῖ* some such participle as *δώσοντι* or *προσοίσοντι*. *Ἐπιψηφίζεσθαι* is, "to authorize by giving permission," and not, as Reiske supposed, "to collect the votes." To this must be referred the statement of the Scholiast, on p. 260: *ὁπότε ἐν τῇ ἐκκλησίᾳ ψήφισμα ἐγράφη, ἐπεψήφιζον αὐτὸ οἱ πρόεδροι πρότερον, εἶτα τῷ δήμῳ ἀνεγνώσαντο*. But the Scholiast here confounds the uses of the active and middle forms of this verb, on the difference of which see Kuster de Med. Verb. p. 132. But the two are sometimes used indiscriminately, especially by later writers, as Dionys. Halic. Antiq. Rom. ix. c. 49, I. 70, and in other places. Aristotle also has *συνεπιψηφίζειν* for *ἐπικυροῦν*, Polit. II. c. 10.

[7] Suidas, in v. *οἱ νομοφύλακες*; cf. Julius Pollux, viii. 94; Sigon. de Rep. Ath. iv. 3, p. 621.

[8] Schol. ad Plat. Gorg. p. 451, b. I have before observed that the consent of the Proedri of different tribes seems to have been necessary.

[9] Æschin. de Fals. Leg. p. 260: *ἀναγνωσθέντος δὲ τοῦ ψηφίσματος, ἀναστὰς ἐκ τῶν προέδρων Δημοσθένης, οὐκ ἔφη τὸ ψήφισμα ἐπιψηφιεῖν.—βοώντων δὲ ὑμῶν, καὶ τοὺς προέδρους ἐπὶ τὸ βῆμα κατ' ὄνομα καλούντων, οὕτως, ἄκοντος αὐτοῦ, τὸ ψήφισμα ἐπεψηφίσθη*. The story of Socrates' conduct, when Chairman, is well known. Vid. Luzac, p. 117.

[1] Or, as others will have it, *ἐπόμνυσθαι*. See Luzac, p. 119. and this work, Book II.

[2] Plutarch, Aristid. c. 3. *Πάλιν δέ γράψας τινὰ γνώμην εἰς τὸν δῆμον, ἀντιλογίας οὔσης πρὸς αὐτὴν καὶ φιλονεικίας, ἐκράτει. μέλλοντος δὲ τοῦ προέδρου*

If the Chairman had refused, without sufficient grounds, to allow the people to vote, he could be tried for it by a process called ἔνδειξις—a fact which we know from the words of Socrates in Plato: ἑτοίμων ὄντων ἐνδεικνύναι με καὶ ὑπάγειν τῶν ῥητόρων, καὶ ὑμῶν κελευόντων καὶ βοώντων, μετὰ τοῦ νόμου καὶ τοῦ δικαίου ᾤμην μᾶλλόν με δεῖν διακινδυνεύειν, ἢ μεθ' ὑμῶν γενέσθαι μὴ δίκαια βουλευομένων, φοβηθέντα δεσμὸν ἢ θάνατον[3]. If, on the contrary, he allowed the people to vote in a case which the existing laws rendered improper, he might be punished, in some cases at least, with infamy, ἀτιμία[4].

After the bill had been read, if no one offered any such objection or opposition to its adoption, the votes of the people were taken on the question by the permission of the Chairman, with the consent of the rest of the Proedri; whence we find that sometimes the former and sometimes the latter are said to have given this permission[5]; since neither the compliance of the Chairman could prevail without the sanction of his colleagues, nor the permission of his colleagues without the consent of the Chairman. The term peculiarly applied to this permission was ἐπιψηφίζειν[6], *to put to the vote*, [121] instead of which ἐπιχειροτονεῖν is sometimes used[7]. Equivalent expressions are also διαχειροτονίαν or ἐπιχειροτονίαν διδόναι (though the former of these two is properly used when two different measures are proposed, one of which is to be chosen by

τὸν δῆμον ἐπερωτᾷν, αἰσθόμενος ἐκ τῶν λόγων αὐτῶν τὸ ἀσύμφορον, ἀπέστη τοῦ ψηφίσματος.

[3] Plat. Apolog. p. 32, a.

[4] Demosthen. adv. Timocrat. p. 716.

[5] Vid. Demosth. adv. Androt. p. 596.; Xenoph. Memorab. I. i. 18; Æschin. adv. Ctesiph. p. 465, where πρόεδρος is used for ἐπιστάτης, of which substitution there are many instances. See also p. 430; and de Fals. Leg. p. 243, &c.

[6] Vid. Hemsterh. ad Lucian. Timon. vol. 1. p. 414. Bipont.

[7] Demosth. adv. Timocr. p. 712, and Jurin. in loc. cf. Vales. ad Harpocrat. p. 75. In other passages, ἐπιχειροτονεῖν is the same as ἐπιψηφίζεσθαι, i. e. ἐπικυροῦν, to *ratify by vote*, as in Demosth. Philip. I. p. 48; de Coron. p. 235, 261.

the people[8]), ἐπιτρέπειν ψηφίζεσθαι, ἐπάγειν ψῆφον, ἐπερέσθαι or ἐρωτᾶν γνώμην[9]. The last expression has originally a sense somewhat different from that sanctioned by general usage. It follows naturally, that whoever asks the opinion of the people, gives them, by the very act of asking, a permission and opportunity of expressing it, that is, of voting[1]. The idea, therefore, of Luzac is groundless and unauthorized, that when the speeches had been delivered on both sides of the question, the Chairman *first* asked the opinion of the people, which was expressed by ἐπερέσθαι or ἐπερωτᾶν; and that in case no citizen made any objection to the votes being taken after the discussion, he *then* gave permission that this should be done, and was *then* said ἐπιψηφίζειν[2]. The Chairman was also said [122] διδόναι τὴν ψῆφον τῷ δήμῳ[3]—though the phrase ψῆφον διδόναι or ἀποδιδόναι τινι elsewhere means to give a vote for a person[4].

There were two ways of giving a vote. In one case it

[8] Vid. Valesius ad Harpocrat. p. 45, and compare Demosthen. adv. Androt. p. 596; adv. Timocr. p. 707, 710; in Neær. p. 1346; Æschin. adv. Ctesiph. p. 430.—Ἐπιχειροτονίαν διδόναι and ποιεῖν is found in Demosth. adv. Timocrat. p. 706, 716.

[9] Xenoph. Memorab. IV. 4, 2; Thucyd. I. 125; Demosth. Androt. p. 594. More examples may be found in Abresch. Dilucid. Thucyd. Auctar. p. 236.

[1] In the same sense the Romans use the term *rogare populum:* the Prætors, tribunes, and other magistrates *rogant* legem, that is, allow the people to vote in the election of a magistrate, or passing of a new law.

[2] Disquisit. de Epist. et Proedr. § 7. p. 105.

[3] Demosth. in Neær. p. 1375, cf. in Eubulid. p. 1302. Similarly we find ἀναδιδόναι τὴν ψῆφον in Alciphron. II. Ep. 3, n. 57, where see Bergler.

[4] Demosth. in Mid. p. 575; Æschin. adv. Ctesiph. p. 404; adv. Timarch. p. 114. In a passage of the same orator, p. 101, some have proposed to read εἰ περὶ τοῦ ἐπιτηδεύματος τούτου ἐδέησε δοῦναι ψῆφον, Τίμαρχος εἴτε ἔνοχός ἐστιν, εἴτε μή—instead of the common reading found in almost every MS.: δοῦναι ψῆφον Τίμαρχον, εἴτε κ. τ. λ. Those who defend the former reading have interpreted δοῦναι ψῆφον in the same sense as ἐνεγκεῖν, or θέσθαι ψῆφον, without any authority that I am aware of for doing so. Until, therefore, such authority be adduced, I shall acquiesce in the explanation of Reiske, who retains the reading of the MSS. and understands the expression ψῆφον διδόναι to be applied to any one who gives occasion to the the people to vote about himself.

was done by casting pebbles into an urn, in the other by a show of hands. The former was called *ψηφίζεσθαι*, the latter *χειροτονεῖν*. The strict senses however of these words are often confounded; thus we constantly find *ψηφίζεσθαι* where *χειροτονεῖν* ought more properly to to have been used. Lysias, for instance, speaking of the thirty tyrants[5], says: *οὗτοι δὲ φυλάρχους τε ἐπὶ τὰς φυλακὰς κατέστησαν, καὶ ὅτι δέοι χειροτονεῖσθαι καὶ οὕστινας χρὴ ἄρχειν παρήγγελλον, καὶ εἴ τι ἄλλο πράττειν βούλοιντο, κύριοι ἦσαν. οὕτως οὐχ ὑπὸ τῶν πολεμίων μόνον, ἀλλὰ καὶ ὑπὸ τούτων πολιτῶν ὄντων ἐπεβουλεύεσθε, ὅπως μήτ' ἀγαθὸν μηδὲν ψηφίσεσθε, πολλῶν δὲ ἐνδεεῖς ἔσεσθε.* Either word might indeed have been here used, but the more correct one is *χειροτονεῖν*. A similar passage again occurs a little further on[6], where we read: [123] *οἱ δὲ ᾤχοντο ἀπιόντες, τοῦτο γοῦν σφίσιν αὐτοῖς συνειδότες, ὅτι οὐδὲν κακὸν τῇ πόλει ἐψηφίσαντο, ὀλίγοι δὲ τινὲς καὶ πονηροὶ καὶ κακῶς βουλευόμενοι τὰ προσταχθέντα ἐχειροτόνησαν.* A very common expression is *γνώμας χειροτονεῖν*, or *ἐπιχειροτονεῖν*[7], because the people voted for the adoption or rejection of a bill by holding up their hands. Yet they are frequently said *ψηφίζεσθαι* in those cases in which they had determined by *χειροτονία*—as *ψηφίζεσθαι βοηθείαν, ναῦς*, &c. in Demosthenes[8]. In fact it may be laid down as a rule, that whenever the substantive expressing the *thing* which the people voted—as the peace to be ratified, the ships to be built, the armies to be sent out—occurs, the Greeks use the word *ψηφίζεσθαι*, and never, if I mistake not, *χειροτονεῖν*. The latter word is, however, found with an infinitive, as in Æschines[9]: *ὁ δῆμος ἅπας ὁμογνωμονῶν ἐχειροτόνησεν, ἐξεῖναι δεῦρο Φιλίππῳ κήρυκας καὶ πρέσβεις πέμπειν ὑπὲρ εἰρήνης.* But the word *χειροτονεῖν*,

[5] Lys. in Eratosthen. p. 124. 16. Steph.

[6] Ib. p. 127. 8. Compare Isocrates, Social. p. 402. ed. Wolf. Basil. 1571.

[7] Demosth. de Coron. p. 309. Hegesipp. de Halones. p. 81. Demosth. Phil. i. p. 48. de Coron. p. 261.

[8] Demosth. Olynth. i. p. 9. Æschin. de Fals. leg. p. 221.

[9] De Fals. leg. p. 198.

and never *ψηφίζεσθαι*, is used to denote the election of magistrates; while on the contrary *ψηφίζεσθαι*, and never *χειροτονεῖν*, is applied to the decision given at a trial[1]. But the compound form [124] of neither words comes under the same rule as the simple one. Both *καταψηφίζεσθαι* and *καταχειροτονεῖν* are used indiscriminately in judicial proceedings, as in Lysias: *πάντας ὑμᾶς ἡγοῦμαι εἰδέναι, ὅτι Ἐργοκλέους διὰ τοῦτο θάνατον κατεχειροτονήσατε*: but a little before we find *εἰ δὲ τούτων μηδέτερον ποιήσει, δέδοκται καταψηφίζεσθαι*[2]. And in Plutarch: *οἱ πλεῖστοι κατεχειροτόνησαν αὐτῶν θάνατον. —Δημητρίου δὲ τοῦ Φαληρέως καὶ Καλλιμέδοντος καὶ τινῶν ἄλλων ἀπόντων κατεψηφίσθη θάνατος*[3]. In the same way *ἀποχειροτονεῖν, ἀποψηφίζεσθαι, to absolve*, are used[4].

It was far more usual in an assembly to decide a question by a show of hands than by ballot, the former being so much more expeditious and convenient. The people were called upon by the Chairman, through the proclamation of the crier, to this effect: Let all those who are in favour of the measure hold up their hands: afterwards all who are opposed to it do the same[5]. As correct a

[1] Sometimes the word *ψηφίζεσθαι* loses its original sense, and means simply *to decree*: as in Demosth. in Lacrit. p. 936.—*πλὴν ἐκβολῆς, ἣν ἂν οἱ θύμπλοι κοινῇ ψηφισάμενοι ἐκβάλωνται*: and *χειροτονεῖν* is used by Pollux (viii. 87.) of the magistrates who preside at and regulate the *χειροτονία*, as the Romans used the term *creare Consulem*, or *Prætorem*, of the magistrate who presided at the election. In Plutarch. Pericl. c. 20. *ἐψηφίσατο* (*ὁ Περικλῆς*) *πλεῖν εἰς Σινώπην Ἀθηναίων ἐθελοντὰς ἑξακοσίους καὶ συγκατοικεῖν Σινωπεῦσι*, the word *ἐψηφίσατο* signifies "caused them to decree," "got them to vote."

[2] Lysias, in Philocrat. p. 181. 27. 41.

[3] Plutarch, Phocion, c. 35.

[4] Demosth. in Mid. p. 583. Vales. ad Harpocrat. p. 20.

[5] Suidas (in v. *κατεχειροτόνησεν*) thus explains the custom of *χειροτονία* in public trials before the people: *ἔλεγεν ὁ κήρυξ, ὅτῳ Μειδίας δοκεῖ ἀδικεῖν, ἀράτω τὴν χεῖρα. εἶτα οἱ θέλοντες ἐξέτεινον τὰς χεῖρας. ὅτῳ μὴ δοκεῖ ἀδικεῖν Μειδίας, ἀράτω τὴν χεῖρα. καὶ ἐξέτεινόν τινες.* Without doubt the same process was gone through in other cases, as in the election of magistrates: "Let those who wish Phocion to be appointed to this office, hold up their hands. Let those who are opposed to it do the same." And the same was

computation as possible [125] was taken by the crier of the number for and against the measure[6], and the opinion of the majority was proclaimed and ratified by the Chairman[7]. In this way all the magistrates who were elected at the assemblies were chosen, laws upon most subjects passed, and some public causes tried, as in case of *προβολή* and *εἰσαγγελία*, on which we shall treat at large hereafter.

The vote by ballot was, as we have observed, of much less frequent occurrence, and a much more tedious process, than that by a show of hands. It was indeed only had recourse to in a few especial cases defined by law, in which, on account of their importance, it was deemed expedient to determine the exact number of votes on both sides of the question, or in which they had an idea that a more secret way of voting, "*tacitæ*" (as Cicero says) "*libertatis vindicem*," would ensure liberty of opinion. These cases were chiefly laws relating to individuals, as for presenting foreigners with the freedom of the state, an exemption from paying taxes, and other honours; for obtaining permission for public debtors, or those who had been punished with infamy, to appeal to the people for a remission of their debt or restoration to their former rights. Whenever also an extraordinary punishment was to be inflicted by the people on an atrocious offender, and in similar cases affecting private persons, recourse was had to the ballot[8]. In all these matters [126] it was ordered by law, that the decree should

done in passing laws. The words of the law quoted by Demosthenes, adv. Timocr. p. 706. shew how the votes were given in the annual review of the laws: *ἡ δ' ἐπιχειροτονία ἔστω ἡ προτέρα ὅτῳ δοκοῦσιν ἀρκεῖν οἱ νόμοι οἱ βουλευτικοί. ἡ δ' ὑστέρα, ὅτῳ μὴ δοκοῦσιν*, κ. τ. λ. Compare Sigonius de Rep. Ath. ii. 4. p. 569. ed. Par. Vales. ad Harpocrat. p. 45.

[6] Suidas ut sup. *ἠρίθμουν τὰς χεῖρας, καὶ ἑῶρα ὁ κήρυξ, ποῖαι πλείους εἰσί.* Cf. Lucian, Hermotim. vol. iv. p. 21. Bipont. *ἠρίθμησας γὰρ αὐτοὺς δηλαδὴ, καθάπερ ἐν ταῖς χειροτονίαις.*

[7] This is called *ἀναγορεύειν τὰς χειροτονίας*, ap. Æschin. adv. Ctesiphont. p. 385.

[8] Vid. Andocid. de Myster. p. 12. 1. Steph. and compare Demosth. adv. Timocrat. p. 719. Id. ib. p. 715. adv. Neær. p. 1375.

not be passed, unless 6,000 citizens at the least voted in favour of it[9]. This was by far the majority of those who were accustomed to attend the assemblies. In time of war, when there was service abroad, there was never an attendance of 5,000, even in matters of the highest importance[1]. In peace, the most crowded assemblies scarcely ever exceeded 8,000, or at most 10,000, though the total number of citizens was estimated at about 20,000[2]. It must however be remembered, that those who lived at a distance from the city, and the richer classes, who were influenced neither by the prospect of gain, nor the hope that their authority would have any material weight with the mob, seldom attended.

Not one of the ancient authors gives us any information upon the exact manner of voting by ballot. Xenophon indeed, in his account of the trial before the people of the twelve generals for neglecting to take up their dead after the battle of Arginusæ, [127] tells us that they voted by tribes, and that each tribe had two urns into which, at the summons of the crier, they threw the votes of acquittal or condemnation[3]. But doubts may justly be raised, whether this was the usual way, or, like the

[9] The idea of Petit (Leg. Att. ii. i. p. 188.) is absurd, that these laws are to be interpreted to imply that 6,000 over and above 10,000 were required. Petit was aware that the whole number of citizens was 20,000, and that, in voting, a majority of them was necessary for the adoption of any measure. Supposing, therefore, that the whole number, 20,000, always attended, he found himself obliged to have recourse to the above explanation. But it is scarcely worth while refuting such ideas. Cf. Boeckh, Publ. Æcon. i. p. 249. who has rightly exposed another error in the same author, viz. in supposing that the above number of votes was necessary in passing *all* decrees, III. i. p. 288.

[1] Thucyd. viii. 72. *οὐπώποτε Ἀθηναίοις, διὰ τὰς στρατείας καὶ τὴν ὑπερόριον ἀσχολίαν, ἐς οὐδὲν πρᾶγμα οὕτω μέγα ἐλθεῖν βουλεύσοντας, ἐν ᾧ πεντακισχιλίους ξυνελθεῖν.*

[2] See Boeckh, Æcon. p. 248. and 35—38; Biagi, de Decret. Athen. c. xix. §. 12.

[3] Xenophon. Hellen. i. 7. 9. *διαψηφίσασθαι Ἀθηναίους πάντας κατὰ φυλὰς, θεῖναι δὲ ἐς τὴν φυλὴν ἑκάστην δύο ὑδρίας, ἐφ' ἑκάστῃ δὲ τῇ φυλῇ κήρυκα κηρύττειν, ὅτῳ δοκοῦσιν ἀδικεῖν οἱ στρατηγοὶ—εἰς τὴν προτέραν ψηφίσασθαι. ὅτῳ δὲ μὴ, εἰς τὴν ὑστέραν.*

whole of the proceedings at that trial, an extraordinary case, as I am inclined to suppose. We here see that the votes were given openly (which must have been the fact if there were two distinct urns); whereas, in most cases, and in all the laws referred to by Andocides and Demosthenes, a secret vote was enjoined. In the latter case the affair seems to have been managed thus. The citizens of each tribe cast their votes of condemnation or acquittal into one urn, and either kept back or put into some other vessel, those which they did not require: so that, when all had voted, the votes of each urn were counted, and the black separated from the white, as in the ordinary trials in the Heliæa[4]. [128] It is exceedingly probable that the votes were always given by the people in tribes, this being a much easier method, and one requiring only a tenth part of the time. The probability too is further confirmed by the account given of Ostracism by the Scholiast on Aristophanes. He tells us that an enclosure was made, having ten entrances, one being destined for the admission of each tribe to give in the piece of earthenware on which their vote was written[5].

[4] Schol. ad Aristoph. Vesp. v. 981. Ἀμφορεῖς ἦσαν, ὧν ὁ μὲν κύριος λεγόμενος, εἰς ὃν τὴν κυρίαν ψῆφον καθίεσαν οἱ δικασταὶ, ἢ καταδικάζοντες ἢ ἀπολύοντες. ὁ δὲ ἕτερος ξύλινος, εἰς ὃν τὰς ἀκύρους καθίεσαν. ὁπότε δὲ πάντες διεψηφίσαντο, εἰς χαλκοῦν κάδον διηριθμοῦντο αἱ ψῆφοι. I have spoken of *white* and *black* votes, and of *acquittal* and *condemnation*, merely for the sake of example, these being, of course, solely applicable to the courts. When speaking of voting upon any other subject, we must call them *votes for the adoption or rejection of any measure.* I am ignorant of the form of both: for the authorities on the subject adduced by Biagi, (cap. xviii. §. 5, 6.) from Pollux, viii. 17. and Ulpian ad Or. adv. Timocrat. p. 469. about perforated and entire, black and white pebbles, shells and beans, allude solely to the courts, and not to the assemblies. It is however highly probable that the Athenians made use of the same in both places. We shall speak of the method of voting by pieces of earthenware in the second Book.

[5] Schol. ad Aristoph. Equit. v. 851. I know not on what authority Baumgarten, ad Histor. Univers. tom. v. p. 197. asserts that there were two railed compartments (cancelli, κιγκλίδες) through which the people passed, and at the first of which they received their ψῆφοι, at the last laid down those which they did not require, and at the same time received their pay. The votes were counted all together, and not those of each tribe separately;

It appears to me unquestionable that the Prytanes, in concert with the Proedri of different tribes, officiated as presidents, distributed the tablets for the votes, and acted as Inspectors on the occasion[6].

Petit[7] seems rightly to have inferred from the words of Nicias in Thucydides, that the Chairman had not the power of allowing the orators to speak a second time on the same subject, nor of permitting the people to retract their votes. The words alluded to are these: *καὶ σὺ, ὦ πρύτανι, γνωμὰς προτίθει αὖθις Ἀθηναίοις, νομίσας, εἰ ὀρρωδεῖς τὸ ἀναψηφίσαι, τὸ μὲν λύειν τοὺς νόμους μὴ μετὰ τοσῶνδ' ἂν μαρτύρων αἰτίαν* [129] *σχεῖν, τῆς δὲ πόλεως κακῶς βουλευσαμένης ἰατρὸς ἂν γενέσθαι*[8]. There is no force in what is alleged in contradiction of this, that the same historian[9] informs us of the repeal of the atrocious edict for the utter destruction of the Mitylenæans, upon the subject being proposed on the following day for their reconsideration. There are many exceptions in cases of emergency to things which the laws generally prohibit; and the interest of the state is sometimes better consulted by an occasional neglect, than by a too religious observance of them.

CHAPTER XII.

On the ψηφίσματα, or Decrees of the People.

When a motion had been successfully supported, and ultimately carried by the votes of the people[1], it was

so that the question was decided not by the majority of tribes, but of the citizens collectively.

[6] Perhaps also the nine Archons: for we are informed by the Schol. on Aristoph. Equit. v. 851. that they assisted the senators in keeping order on the occasion of voting by Ostracism.

[7] Leg. Att. iii. 1. p. 259.

[8] In Thucyd. vi. 14. *ἀναψηφίζειν* is "to put to vote again." Suidas quotes the word *ἀναψηφίζεσθαι* from the Dulodidascalus of Pherecrates, and explains it by *μεταψηφίζεσθαι*.

[9] Thucyd. iii. 36.

[1] The individual who succeeded in carrying a motion was said *νικῆσαι τὸ*

copied upon a tablet, with the date, and name of the Chairman, who had given permission to vote upon it, affixed; after which it was deposited in the temple of the Mother of the Gods, where all public records were kept[2] under the custody of the public Scribe, [130] and the key of which was entrusted to the care of the Chairman[3]. It was also very common for decrees to be engraved on tablets of brass or columns of stone, and set up in a conspicuous place for the inspection of the public. This was done at the expense of the state, and a good many such monuments have been preserved to this day[4].

The word *psephisma* properly signifies *a law proposed at an assembly and approved by the people.* It also means a *decree or bill of the senate* (*βουλῆς ψήφισμα* having, as is well known, this sense), and is derived from *ψηφίζεσθαι*, which is properly to *vote by pebbles;* and, in its secondary signification, to *vote* in general. But there is yet a third, and much more extended meaning of *ψήφισμα*. By that name the Athenians designated those public records, which did not contain the actual bill or decree, but merely an account of the circumstances connected with the proposal or adoption of it, or a statement of the measures passed in consequence by the people. The object of this was always to have at hand, in case they

ψήφισμα, or *τὴν γνώμην*, as in Æschines, adv. Ctesiph. p. 452. *νικᾷ γὰρ ἕτερον ψήφισμα Φιλοκράτης.* Aristoph. Nub. v. 431.

Ἐν τῷ δήμῳ γνώμας οὐδεὶς νικήσει πλείονας ἢ σύ.

[2] Demosth. de Fals. leg. p. 381. adv. Aristogit. p. 799. Compare Vales. ad Harpocrat. p. 128. Wesseling ad Petit. Leg. Att. p. 178. Schweigh. ad Athen. v. c. 53. Meurs. Lect. Attic. i. c. 11. Petit is greatly mistaken in confounding this temple with the *βουλευτήριον*, though it was adjacent to the latter. Æschin. adv. Ctesiphont. p. 576. Pausan. Attic. c. 3. §. 4. In other states the place where the public records were kept was called *Ἀρχεῖον*, whence the name *Archives.* See Hesych. in v. and his commentators.

[3] Jul. Pollux, viii. 96. Compare Telephus, ap. Eustath. ad Hom. Odyss. P. v. 455. p. 641. 45. Basil.

[4] The discussion of this custom has little reference to the subject of the assemblies, and has besides been so fully entered into by others that little remains to be said. The reader is referred to Taylor, on Lycurg. p. 121. R. Biagi, de Decret. Athen. c. xxviii. Boeckh, p. 185.

were again wanted, authentic documents of the whole transaction. A psephisma of this description is recorded in Demosthenes[5], by which we find that the orator had proposed a law for reforming the old system of the trierarchies; that Patrocles accused him by a γραφὴ παρανόμων of unconstitutional measures; that he was acquitted, and that his accuser did not obtain a fifth part of the votes. Another psephisma of this description occurs also in the same orator[6], informing us, that by command of the people, the Prytanes [131] and Strategi represented to the senate the propriety of appointing certain ambassadors; and that Cephisophon, Democritus, and Polycritus accordingly were appointed. In other psephismata, in addition to the actual measure which had been proposed, some notice is taken of the events which followed or were incidental to its adoption: thus, in the case of the proposal to appoint ambassadors, besides the mere proposal, the names of those who were subsequently chosen are appended. Of this kind there are four in the single oration of Demosthenes *de Coronâ*[7]: and it seems to have been a usual custom to add such an appendix in cases where any measure was passed which had to be carried into effect immediately.

The form of the decrees was different according to the times in which they were passed. Not to mention the less important variations, we may observe that those of greater antiquity, which were passed before the Archonship of Euclides, are generally headed by the formula: Ἔδοξε τῇ Βουλῇ καὶ τῷ δήμῳ: after which the tribe is specified in whose Prytany each was passed, then the names of the Scribe and the Chairman, and lastly that of the author of the proposal. We will illustrate this by an example. In Andocides[8] we have a psephisma commencing thus: Ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ, Αἰαντὶς ἐπρυτάνευε, Κλεωγένης ἐγραμμάτευε, Βοηθὸς ἐπεστάτει· τάδε Δημόφαντος συνέγραψεν, κ. τ. λ. And all of the

[5] De Coron. p. 261. [6] De Coron. p. 250.
[7] Pp. 235. 282. *bis*. 289—291. [8] De Myster. p. 13. Steph.

above age are similar[9]: for the varieties observable in the occasional omission, [132] at the beginning, of the senate, and sole mention of the people, *ἔδοξε τῷ δήμῳ*, in the substitution of *εἶπε* for *συνέγραψε*, and in the insertion of the words *τύχῃ ἀγαθῇ τῇ Ἀθηναίων*, are all unimportant. When we find no mention made of the Prytany, the Scribe, and the Chairman, at the head of the decree, as in the following one from Andocides[1]: *Ἔδοξε τῷ δήμῳ, Τισαμενὸς εἶπε*: or when not even these words occur, *Ἔδοξε τῷ δήμῳ*, but only the name of the author of the bill, as we find again in Andocides[2], *Πατροκλείδης εἶπεν*—in these cases we are not to suppose the deficient words were wanting in the original copies of the decrees, but that they have been omitted by the writers who quote them.

But the decrees which were passed after the Archonship of Euclides till about Ol. xiv.* are headed by a formula totally different from those just mentioned. Here we find no introductory *Ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ*, no mention of the Scribe and Chairman; but the decree commences with the name of the Archon, (which is never specified in the earlier ones,) then follows the day of the

[9] The following decrees of this age, in which the introductory formula is found entire, are still extant. Thucyd. iv. 118. about making a truce with the Lacedæmonians: *Ἔδοξε τῷ δήμῳ· Ἀκαμαντὶς ἐπρυτάνευε, Φαίνιππος ἐγραμμάτευε, Νικιάδης ἐπεστάτει· Λάχης εἶπε· Τύχῃ ἀγαθῇ τῇ Ἀθηναίων, ποιεῖσθαι τὴν ἐκεχειρίαν.* An Inscription in Boeckh, Œcon. Ath. ii. Tab. ii. no. 3. about restoring the sacred revenues: *Ἔδοξεν τῇ βουλῇ καὶ τῷ δήμῳ· Κεκροπὶς ἐπρυτάνευε, Μνησίθεος ἐγραμμάτευε, Εὐπείθης ἐπεστάτει· Καλλίας εἶπεν· ἀποδοῦναι τοῖς θεοῖς τὰ χρήματα τὰ ὀφειλόμενα, κ. τ. λ.* The form of a decree of the senate, in Plutarch's Lives of the Ten Orators, (Antiphon. tom. ii. p. 833.) resembles the above. *Ἔδοξε τῇ βουλῇ, μιᾷ καὶ εἰκοστῇ τῆς πρυτανείας, Δημόνικος Ἀλωπεκῆθεν ἐγραμμάτευε, Φιλόστρατος Πελληνεὺς ἐπεστάτει, Ἀνδρων εἶπεν, κ. τ. λ.* Here the name of the presiding tribe is omitted, which we know to have been Antiochis, from the demus of the Chairman and Scribe: but the day of the Prytany is added here, which is usually omitted in others.

[1] De Myster. p. 11. 24.

[2] Ibid. p. 10. 33.

[* The author means Ol. cxiv. both here and shortly below. Euclides was Archon Ol. xciv. 2.]

month on which the motion was carried, the tribe then in office, and lastly the name of the proposer. After this introduction, the motive for passing the decree is stated, and then the decree itself, beginning with the formula: *δεδόχθαι τῇ βουλῇ* [133] *καὶ τῷ δήμῳ*[3]. The decree of Demosthenes for sending ambassadors to Philip will illustrate this[4]:

Ἐπὶ Ἄρχοντος Μνησιφίλου, Ἑκατομβαιῶνος ἕνῃ καὶ νέᾳ, φυλῆς πρυτανευούσης Πανδιονίδος, Δημοσθένης Δημοσθένους Παιανιεὺς εἶπεν· Ἐπειδὴ Φίλιππος ἀποστείλας πρέσβεις περὶ εἰρήνης, ὁμολογουμένας πεποίηται συνθήκας πρὸς τὸν Ἀθηναίων δῆμον, δεδόχθαι τῇ βουλῇ καὶ τῷ δήμῳ τῷ Ἀθηναίων ὅπως ἂν ἡ εἰρήνη ἐπιτελεσθῇ ἡ ἐπιχειροτονηθεῖσα ἐν τῇ πρώτῃ ἐκκλησίᾳ, πρέσβεις ἑλέσθαι ἐκ πάντων Ἀθηναίων ἤδη πέντε.

The few and trifling varieties which occur in the psephismata of this age (all of which are found in the single oration of Demosthenes *de Coronâ*), e. g. the omission of the Prytany in some[5], the suppression of the author's name in others[6], or the absence of the formula *δεδόχθαι τῇ βουλῇ καὶ τῷ δήμῳ*[7], are easily explained by the natural supposition that the orator who quotes them did not think it necessary to do so word for word[8], but

[3] De Coron. p. 235. See pp. 253. 266. 282. 288. for more psephismata of this description.

[4] The infinitive is here *precative*, and peculiar to these bills. See Taylor on Demosthen. de Coron. p. 235. R. The psephismata of which we are now speaking are nothing more than the original bills, just as they were engrossed by the authors of them, and proposed to the people. When they had been carried in the assembly, they were publicly recorded, with the addition merely of the date and name of the Chairman, and perhaps also the seal of the city (see Biagi, c. xxviii. §. 4.) to shew that they were valid, and had the authority of laws.

[5] Demosth. de Coron. pp. 238. 249. 265.

[6] Ib. p. 282.

[7] Ib. u. s.

[8] The following decree in Demosthenes de Coron. p. 265. appears to me in some respects different from the rest: *Ἄρχων Δημόνικος Φλυεὺς, Βοηδρομιῶνος ἕκτῃ μετ' εἰκάδα, γνώμῃ βουλῆς καὶ δήμου, Καλλίας Φρεάρριος εἶπεν, ὅτι δοκεῖ τῇ βουλῇ καὶ τῷ δήμῳ στεφανῶσαι Ναυσικλέα.* We here find the indicative, *ὅτι δοκεῖ*, instead of the precative infinitive. The reason seems to

merely wished to give the purport of them. [134] Perhaps, indeed, there is not a single psephisma quoted entire by the orator.

If any measure was proposed to the people by the authority of the senate, the Strategi, or any other magistrate, the fact is specified, in some decrees extant in Demosthenes, by the formula: *γνώμῃ βουλῆς, στρατηγων, Πολεμάρχου*, upon which I have already made some observations. Moreover, if the assembly at which the measure was passed was an extraordinary one, it is always duly mentioned at the head of the decree[9].

After Ol. xiv.* or thereabouts, another form of drawing up decrees came into vogue, and remained unaltered till the latest times. In these we find that the Archon is mentioned first; then the Prytany is specified, as well as what place it held in the order of the Prytanies[1]. Then is added sometimes the name of the Scribe[2], although this is frequently omitted, even [135] in inscriptions: then the day of the month and that of the Prytany, and lastly, the names of the Chairman[3] and author of the bill.

be, that this psephisma is not the actual bill, but merely a memorial, which Callias, who had proposed the bill of the senate, for crowning Nausicles, to the people, upon that bill being immediately ratified by them, had ordered to be drawn up by the Scribe, and deposited among the public records. There is no reason, therefore, why we should find any difficulty in the unusual addition of *ὅτι δοκεῖ*.

[9] Demosth. de Coron. p. 238. 249. * See note (*) sup. p. 133.]

[1] But this is not mentioned in a decree in Josephus, An. J. xiv. 16. In Plutarch's Lives of the Ten Orators, tom. ii. p. 852. *ἐπὶ Ἀναξικράτους Ἄρχοντος ἐπὶ τῆς Ἀντιοχίδος ἐν τῇ πρυτανείᾳ*, we should undoubtedly read *ἕκτης* or *ἐνάτης πρυτανείας*. Anaxicrates was Archon Ol. 118. 2.

[2] See the decree concerning Philetærus, the brother of King Eumenes, which we have quoted in Chap. 2. The presiding tribe in this decree is Leontis, and the demus of the Scribe Pirithous, of the tribe Œneis. Now unless we suppose that upon the addition of two new tribes, Antigonis and Demetrias, after Ol. 118. 2. and the consequent alteration in the demi, the Pirithoedæ were registered under one of the two, this decree makes against the opinion of those who hold that the *ὁ κατὰ πρυτανείαν γραμματεὺς* (for this is the Scribe whose name is attached to decrees) was invariably of the presiding tribe. See Corsin. Fast. Att. Diss. iv. n. 18.

[3] The formula *τῶν προέδρων ἐπεψήφισεν ὁ δεῖνα*, is of frequent occurrence in these decrees; but we never find *ὁ δεῖνα ἐπεστάτει*. The *Συμπρόεδροι* are

The decree itself has usually the same formula: *δεδόχθαι* (sometimes *ἔδοξεν*) *τῇ βουλῇ καὶ τῷ δήμῳ, ἀγαθῇ τύχῃ.* I will subjoin as an example the copy of an inscription from Chandler, with which the kindness of Boeckh has furnished me:

ΕΠΙ ΝΙΚΟΔΩΡΟΥ ΑΡΧΟΝΤΟΣ
ΕΠΙ ΤΗΣ ΚΕΚΡΟΠΙΔΟΣ ΕΚΤΗ
Σ ΠΡΥΤΑΝΕΙΑΣ ΓΑΜΗΛΙΩΝΟΣ
ΕΝΔΕΚΑΤΗΙ ΕΚΤΗΙ ΚΑΙ ΕΙΚΟ
ΣΤΗΙ ΤΗΣ ΠΡΥΤΑΝΕΙΑΣ ΕΚΚΛΗ
ΣΙΑ ΤΩΝ ΠΡΟΕΔΡΩΝ ΕΠΕΨΗΦΙΣ
ΘΕΝ ΑΡΙΣΤΟΚΡΑΤΟΣ ΑΡΙΣΤΟ
ΔΗΜΟΥ ΟΙΝ ΚΑΙ ΣΥΜΠΡΟΕΔΡΟ
Ι ΘΡΑΣΥΚΛΗΣ ΝΑΥΣΙΚΡΑΤΟ
Σ ΘΡΙΑΣΕ ΕΙΠΕΝ ΔΕΔΟΧΘΑΙ ΤΩ
Ι ΔΗΜΩΙ[4].

[136] The above is the earliest inscription of this form which I have seen. It was written in the Archonship of Nicodorus, Ol. cxvi. 3, eight years after the conquest of Athens by Antipater, at which time (Ol. cxiv. 3.) the form of the Attic republic underwent certain alterations. And perhaps it was about that time that this change in the form of the decrees was introduced—a change which, I have little doubt, was less considerable than it at first sight appears, inasmuch as there is probably not a single

mentioned, because the Chairman could not allow the people to vote without their consent. We may also remark, that in these decrees, after the date, is added *ἐκκλησία*, or *ἐκκλησία κυρία*, as in Diogenes Laertius, Vit. Zenon. p. 441. and sometimes also the place of assembly, as in Josephus, *ἐκκλησίας γενομένης ἐν τῷ θεάτρῳ*. But I shall not attempt to notice every trifling variety which occurs in every kind of psephisma. We do not always find *ἐπὶ τοῦ δεῖνος Ἄρχοντος*, or *ἐπὶ Ἄρχοντος τοῦ δεῖνος*, but sometimes *ἐπὶ τοῦ δεῖνος*, without *Ἄρχοντος*, or *τοῦ δεῖνος Ἄρχοντος* without the preposition; or even *κατὰ τὸν δεῖνα Ἄρχοντα*. Instead of *φυλῆς πρυτανευούσης* we find *πρυτανείᾳ φυλῆς*, in some decrees. Biagi (de Decret. Ath. c. vii. c. xii. c. xxvii. c. xxxi.) has diligently collected these and similar peculiarities.

[4] In v. 7. ΕΠΕΨΗΦΙΣΘΕΝ is a corrupt reading for ΕΠΕΨΗΦΙΣΕΝ. ibid. *Αριστοκρατος* for *Ἀριστοκράτης*. v. 8. ΟΙΝ is an abbreviation for *Οἰνοαῖος*, and in v. 10. ΘΡΙΑΣΕ for *Θριάσιος*. *Ναυσικράτος* for *Ναυσικράτους*.

decree quoted by Demosthenes, which is in every respect unmutilated and entire.

I have asserted that the name of the Chairman, who gave the people permission to vote on the question, is usually attached to decrees. This is true only of the first and third classes of them; for in the decrees of the second class, which are extant in Demosthenes, the name of the Chairman never occurs[5]. That the custom, however, had not become obsolete at that time, is not only highly probable, but actually proved by the testimony of Æschines: *Καὶ γὰρ τοὺς χρόνους, καὶ τὰ ψηφίσματα καὶ τοὺς ἐπιψηφίσαντας ἐν τοῖς δημοσίοις γράμμασι τὸν ἅπαντα χρόνον φυλάττετε*[6]. In another place, he thus addresses the scribe: *Ἀνάγνωθί μοι τίς ἦν ὁ ταῦτα ἐπιψηφίζων Πρόεδρος*[7]. Where can we expect these names to have been written, unless in the very decrees upon which they permitted the people to vote? Hence [137] Dodwell[8] has supposed that those who are called *Archons* at the head of these decrees, are to be considered as the Chairmen of the Prytanes; and this supposition he thinks strongly supported by the singular fact that not one of all these Archons is mentioned in the Greek Fasti (which are most authentic and certain for that period) as the Archon of the year in which the decree where he is named was passed. The Archon Demonicus, mentioned in Demosthenes, is nowhere found in the Fasti, and is besides attached to a decree which appears to have been written Ol. cv. 3, the year in which the Archon Eponymus was Cephisodotus[9]. There are two decrees which bear the name of Mnesiphilus, belonging to Ol. cviii. 2, when

[5] Except in one law in Demosthenes, adv. Timocr. p. 723.

[6] Æschin. de Fals. leg. p. 266. I agree with Reiske, who proposes to read *τὰ ψηφίσματα καὶ τοὺς χρόνους*.

[7] Adv. Ctesiphont. p. 465.

[8] De Cyclis. Dissert. iii. sect. 41.

[9] De Coron. p. 265. I have followed Corsini in assigning the dates of the decrees, Fast. Att. Diss. vii. and shall always mention in the notes when I dissent from him.

Themistocles was Eponymus [1]. There are three with the name Nicocles or Neocles, and Chærondas, all which belong to Ol. cix. 4, in which Nicomachus was the Archon [2]. There are three others, of Ol. cx. 2, in which Lysimachides was Archon [3], where we find the names Heropythus and Nausicles. There is one bearing the name of [138] Euthycles, of Ol. cx. 3, when Chærondas was Archon [4]; and, lastly, one bearing the name of Polycles, of Ol. cix. 3. when Sosigenes was Archon [5]. To these we may probably add Mnesithides, Chærondas, and Xenias. The name Mnesithides is found in Demosthenes, and taken, in all probability, from the head of some decree. The orator is speaking of the war of the Amphictyons against the Amphissæan Locrians, and is maintaining that it originated by the intrigues of Æschines. He then proceeds: λέγε δὴ καὶ τοὺς χρόνους ἐν οἷς ταῦτα ἐγίγνετο· εἰσὶ γὰρ καθ' οὓς ἐπυλαγόρησεν οὗτος. λέγε. *Χρόνοι. Ἄρχων Μνησιθείδης, μηνὸς Ἀνθεστηριῶνος ἕκτῃ ἐπὶ δεκάτῃ* [6].

[1] De Coron. p. 235. and 238. In the latter passage, indeed, Μνησίφυλος is read instead of Μνησίφιλος; but the latter is without doubt the true reading.

[2] Nicocles or Neocles, de Coron. p. 249, 250. Reiske has rightly written Νεοκλέους in both places. The MSS. vary between Νεοκλέους and Νικοκλέους. Chærondas, de Coron. p. 253. This decree, however, Corsini refers to Ol. cx. 1. But the Eubœan war, undertaken by the advice of Demosthenes, and successfully brought to an issue, Ol. cix. 4. caused the expulsion of the tyrants and liberation of the cities; on which account Demosthenes had certain honours decreed him by both the Eubœans and Athenians. But it is scarcely credible, that when the war was carried on Ol. cix. 4. and in the summer time, a decree should have been proposed in the winter of the following year, in the month Gamelion, for crowning Demosthenes. Compare Diodorus, xvi. 74.

[3] De Coron. p. 282. and 288.

[4] Ibid. p. 266. Corsini refers this decree to Ol. cx. 2. I shall state hereafter my reasons for differing from him.

[5] Ibid. p. 261.

[6] Ibid. p. 279. The whole history of these transactions is exceedingly obscure, on account of the reluctance of Æschines and Demosthenes to be explicit upon them. As, however, it is impossible in this place to dwell at sufficient length upon the subject, I have thought it better to say nothing than to say too little.

Now this I conceive to have been recited out of the decree which was passed concerning the appointment of Æschines to the office of Pylagoras. If so, this mention of Mnesithides must belong to Ol. cx. 1. in which year Theophrastus was Eponymus[7]. Chærondas is spoken of by Æschines: *Ἐπὶ γὰρ Χαιρώνδου Ἄρχοντος, Θαργηλιῶνος μηνὸς δευτέρᾳ φθίνοντος, ἐκκλησίας οὔσης, ἔγραψε ψήφισμα Δημοσθένης, ἀγορὰν ποιῆσαι τῶν φυλῶν Σκίροφοριῶνος δευτέρᾳ ἱσταμένου καὶ τρίτῃ, καὶ ἐπέταξεν ἐν τῷ ψηφίσματι ἑκάστῃ τῶν φυλῶν ἑλέσθαι τοὺς ἐπιμελησομένους τῶν ἔργων [ἐπὶ τὰ τείχη] καὶ ταμίας κ. τ. λ*[8]. There can be no doubt but that this date is taken from Demosthenes' own decree. The transactions here mentioned took place Ol. cx. 1, or perhaps cx. 2[9]; at all events, [139] before cx. 3; in which year Chærondas was Eponymus. Now, according to the Fasti, the Eponymi for the first and second years of this Olympiad were Theophrastus and Lysimachides. Lastly, Xenias is mentioned by Plutarch (or whoever was the author of the Lives of the Ten Orators)[1] as follows: *Γραψάμενος δὲ ὁ Ὑπερίδης τὴν Φωκίωνος δωρεὰν, ἣν εἶπε Μειδίας Μειδίου Ἀναγυράσιος ἐπὶ Ξενίου Ἄρχοντος, Γαμηλιῶνος*

[7] Æschin. adv. Ctesiphont. p. 505, 506.

[8] Adv. Ctesiphont. p. 420. seq.

[9] Philochorus tells us, that in Ol. cx. 1. in the Archonship of Theophrastus, when a war with Philip threatened the state, Demosthenes proposed a law *ναῦς πληροῦν καὶ τὰ ἄλλα ἐνεργεῖν τὰ τοῦ πολέμου.* (Ap. Dionys. Hal. Epist. ad Ammæum, p. 124. Sylburg.) It is therefore highly probable that at the same time the decree for the repairs of the walls was proposed. In the year following, however, (Ol. cx. 2.) in the Archonship of Lysimachides, when the state absolutely required all its funds for the war which now appeared inevitable, *τὰ μὲν ἔργα τὰ περὶ τοὺς νεωσοίκους καὶ τὴν σκευοθήκην ἀνεβάλοντο διὰ τὸν πόλεμον τὸν πρὸς Φίλιππον.* The business, therefore, of repairing the walls appears to have been put off; and those who were appointed superintendants in the work, did not, as it was left unfinished, retire from their office, nor give in their accounts. Hence it happened, that Demosthenes, who was one of the number, and had entered upon the office Ol. cx. 2. in the beginning of the year (for he had been appointed at the end of Ol. cx. 1.), still continued a *τειχοποιὸς* in the month Pyanepsion, Ol. cx. 3. at which time the bill of Ctesiphon for crowning him was proposed. Æsch. p. 400.

[1] Hyperid. tom. ii. p. 850.

ἑβδόμῃ φθίνοντος, ἡττήθη. I think it exceedingly probable that this was taken from the head of Midias' decree. But no Xenias is mentioned in the Fasti before Ol. cxiv. 3, in which year Hyperides and Demosthenes both died: there is one recorded of that name seventeen years after, in Ol. cxviii. 4.

Every one of these, then, who are mentioned at the head of the decrees as Archons, but are not found as such in the Fasti, either at all, or at least in those years to which the decrees belong, are, in the opinion of Dodwell, to be considered as Epistatæ. This is certainly an extraordinary idea. [140.] The objection which would naturally present itself in the first place is this:—Would the titles of the magistrates at Athens be so undetermined, so capricious, and promiscuous; and would even their *public* appellations be so various and unsettled, that those who, on all other occasions, even in decrees, are called *Ἐπιστάται*, or *Πρόεδροι*, and are said *ἐπιστατεῖν* or *προεδεύειν*, should be mentioned in public records and other decrees by the same name and in the same place as that by which the chief of the Archons is every where else designated? The explanation which the grammarians give of the names *Πρύτανις* and *ἐπιστάτης* by *Ἄρχων*, has no reference to this, as every one will at once perceive. In the next place, when we know that the office of Chairman was limited to the space of one day, and that no one could hold it twice, how can it have happened that Mnesiphilus, for instance, or Heropythus, have their names attached to several psephismata in the same year, which were passed not at the same, but at different assemblies? How, I ask, could Æschines, Demosthenes, and Plutarch, use the names of the Chairmen for the day to designate a certain year? But these and similar objections have already been brought forward by others, and no one at the present day will be found to support Dodwell's opinion, completely false as it evidently is. The opinion of the learned and ingenious Italian, Corsini, is well known, and has been almost universally received, viz. that it was customary at Athens, in case of

the death, removal from office, or unavoidable absence of the Archon Eponymus, for some other member of the college, the King or Polemarch, or one of the Thesmothetæ, to take his place and perform his duties in the senate and assembly: and that his name was added to all bills of the senate, decrees of the people, and other public records, during the time that he was vicegerent, instead of that of the Archon Eponymus. [141] But for my own part, I very much doubt whether after the time of Solon the Archons used ever to preside over and regulate the meetings of the senate and the people, as Corsini supposes [2]. We are not given to understand this by any one of the ancients. All concur in attributing to the Proedri and their Chairman the chief management in the senate and the assembly, but scarcely any duties are assigned by them to the Archons. Pollux indeed tells us [3] that the accusations called εἰσαγγελίαι were laid before the people by the Thesmothetæ; but this took place only once on the first assembly of each Prytany, and had nothing whatever to do with the Archon Eponymus;—not to mention that this was entirely different from the office of the Presidents. In the appointment of the Strategi the Archons certainly took an important part, whence they are said by Pollux themselves χειροτονεῖν Στρατηγούς: but then this appointment only took place once a year. Again; the Archons directed and regulated the enquiry into the conduct of the magistrates (ἀρχῶν ἐπιχειροτονία), which was instituted at the first assembly in every Prytany: but they cannot on that account be said to have presided at those assemblies [4]. Perhaps also, when the method of voting by ballot was adopted (which was but seldom) on any question, the Archons distributed the votes, or ballots, to the people. And lastly, the pay for attending the assemblies (τὸ ἐκκλησιαστικὸν) was given out by the Thesmothetæ. But all the other

[2] Fast. Att. Diss. I. no. 24.
[3] Pollux, lib. viii. sect. 87. and 95.
[4] Ibid. sect. 87. and 95.

duties in the assemblies belonged to the Proedri, and not to the Archons. In the senate it was clearly impossible for them to preside; for that body sat daily, except on holidays; while the Archons had likewise daily to officiate in their capacity of judges, and could not perform both duties at once. I conclude, therefore, that this opinion of Corsini, regarding the substitution of the names of those Archons who presided in the senate and assemblies in place of the Eponymi, for the names of the Eponymi themselves, in decrees and public records or monuments, is untenable. [142] It is very certain that the only object in attaching the name of the Archon to these monuments was to designate the year when the events there recorded took place. Moreover, it is not the name of the Archon who was concerned in, or presided, on the occasion of any such event, but that of the Eponymus, the head of the college of Archons, which is always thus attached. Indeed his title of *Ἐπώνυμος* is derived from this custom of designating the year by his name, not only in public monuments, but on all occasions in which it was requisite to assign the date. There are, however, many such public monuments, belonging to the same year, which yet do not bear the name of one Archon, but those of several. In these cases the only probable solution of the difficulty seems to be, to suppose that on certain occasions the office of the Archon Eponymus was, from some cause or other, interrupted, and that the power, which was usually invested in one individual for the space of a year, was on such occasions divided amongst several, whether of the college of Archons, previously appointed substitutes (*ἐπιλαχόντες*), or surrogates. Hence it would naturally follow, that different parts of the year would be designated, not by the name of the individual who was Eponymus at the beginning of it, and whose name alone is specified in the Fasti, but by the names of his successors, according as each one happened to be in office at the time. This is almost precisely the same opinion which Corsini at first entertained, but subsequently rejected for the one

which I have mentioned, and stated my objections to, above. It may, however, be in some measure confirmed by the arguments which Corsini employed in its favour[5]. Nothing surely could be more likely, especially in the more corrupt times of the republic, than that the conduct of some of the Archons [143] should be impeached by a public informer, or even by an honourable and well-meaning citizen, in the excess of his zeal for the public welfare. This, we assert, might frequently have been done at the ἐπιχειροτονία of the Archons, which was held every Prytany, and any Archon thereby deposed from his office, and another substituted in his stead. It might also easily have happened, that the Archon was hindered by illness during a part of the year from attending to his ordinary duties, and that till his recovery some other was substituted to take his place, who, as the *vicem gerens* of the Eponymus, would have his name affixed to any public records or monuments which might be decreed whilst he was in office. We cannot, however, deny that there are still difficulties remaining. It would appear strange that the Eponymus so very frequently gave up his office before its due expiration, that in eleven decrees, (or, if we add those in Demosthenes and Æschines bearing the names of Mnesthides and Chærondas, no fewer than thirteen,) all passed within twenty years, from Ol. cv. 3, to Ol. cx. 3, we should find the names of substituted Archons affixed: and not only this, but that we should have to suppose the same to have happened twice or thrice[6] in a single year,

[5] Fast. Att. Dissert. vii. No. 13.

[6] Not *five* times, as Corsini will have it, who expresses the following opinion about the Archons of this year, Ol. cx. 2.

1. Lysimachides, recorded as Eponymus in the Fasti.

2. Euthycles, on the 22nd of Pyanepsion; in a decree quoted by Demosthenes, de Coron. p. 266.

3. Chærondas, on the sixth of Elaphebolion, ib. p. 243.

4. Heropythus, on the twenty-fifth of Elaphebolion, and twenty-ninth of Munychion, ib. p. 282.

5. Nausicles, on the sixteenth of Scirrhophorion, ib. p. 188.

6. Lysimachides, towards the end of Scirrhophorion.

For, since Dionysius informs us that the Athenian ambassadors whom De-

as we shall find it necessary to do. [144] Thus, for instance, in Ol. cx. 2, the Eponymus at the beginning of the year was Lysimachides, whose name is recorded in the Fasti. We must suppose that after a few months he

mosthenes had voted to send on the sixteenth of Scirrhophorion, arrived at Thebes when Lysimachides was Archon; Corsini thence infers, that Lysimachides ought to have been Eponymus after Nausicles; that is, after the sixteenth of Scirrhophorion: in which inference I do not agree with him. For Dionysius, and Philochorus whom he follows, designate the year by one Eponymus, (Lysimachides, who was Archon first in that year,) in conformity with the usual custom of historians. But it by no means therefore follows, that Lysimachides was actually in office at that time of the year, and that Nausicles had retired before its expiration. Lysimachides therefore ought not to have been twice named in Corsini's table, but only once. I do not believe that Euthycles had anything more to do with this year than Chærondas. For Taylor has proved (Præfat. ad Æschin. adv. Ctesiph.) rightly from Æschines himself, (a much higher authority in this respect than Cicero and Plutarch) in opposition to Corsini, that the decree of Ctesiphon for crowning Demosthenes, dated in the Archonship of Euthycles, as well as the indictment of Æschines, dated in that of Chærondas, was written not before, but after the battle of Chæronea, Ol. cx. 3, in which year the Eponymus in the Fasti is Chærondas. But as in the month Pyanepsion in this year Euthycles is recorded as Archon, and afterwards, in Elaphebolion, Chærondas; we must suppose that in consequence of some interruption in the office of Chærondas, caused perhaps by illness, Euthycles took his place till he could return to it again. Hence we shall have the following order of Eponymi for Ol. cx. 2.

1. Lysimachides, in the Fasti.
2. Heropythus, Elaphebol. 25, and Munych. 29.
3. Nausicles, Scirrhophor. 16.

There were therefore three Eponymi this year; and the same number also in Ol. cix. 4.

1. Nicomachus, in the Fasti.
2. Neocles, Boedrom. 30; in Demosth. de Cor. p. 249, 250.
3. Chærondas, Gamelion 25; ib. p. 253. There are never found *more* than three Eponymi in one year: and perhaps if Corsini had been aware of this fact, he would not have changed his former opinion about these Archons for his latter one about the Pseudeponymi. It will appear strange to some that in not one of the decrees of this age the same Archon Eponymus is recorded as that in the Fasti. This may, however, have so happened by chance: for in decrees of a later age the Eponymi correspond with those in the Fasti, as Nicodorus, and Agathocles. And it is very probable, that if several of these had belonged to one year, we should have found the names of surrogate Archons. We cannot, for instance, determine whether Arrhenides or Dionysius are surrogates or not, because the Fasti after Ol. cxxi. are uncertain and imperfect.

gave up his office, and Heropythus was appointed his successor. But Heropythus, too, shares the same fate before the expiration of the year: [145] for while we have his name affixed to two decrees, dated in the months Elaphebolion and Munychion, we find the name of Nausicles in a decree dated in the month Scirrhophorion. If this singular anomaly should present such insuperable difficulty to the mind of any reader, as to incline him to reject the whole theory, I confess I shall make no great opposition, provided he does not adopt in preference the former opinion of Corsini. I am far from extolling my own view as infallibly and unquestionably correct; but I certainly do despair of any explanation being offered which possesses higher probability, at the same time that it is capable of more satisfactory proof. And all who have considered the question with diligent attention, will, I believe, agree with me in this respect.

But it is now time for us to return to the subject which was under our consideration, before we entered upon this digression. The names of the Chairmen are not affixed to all the decrees extant in Demosthenes; and yet it is difficult to suppose that the custom of doing so was dropped at that period. As therefore, the opinion of Dodwell is inadmissible, we can only surmise [146] that they were added in the original copies, but omitted by the writer who quotes them. And this conjecture seems to derive some confirmation from the fact that one law at least is preserved by Demosthenes, in which the name of the Chairman is recorded, and which is as follows:

Ἐπὶ τῆς Πανδιονίδος πρώτης, τῆς Πρυτανείας δωδεκάτῃ, τῶν προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυῤῥινούσιος, Τιμοκράτης εἶπε[7], κ. τ. λ.

Yet this very law is quoted but a little before, *without* the name of the Chairman[8].

Ἐπὶ τῆς Πανδιονίδος πρώτης, δωδεκάτῃ τῆς Πρυτανείας, Τιμοκράτης εἶπε.

[7] Adv. Timocrat. p. 723.

[8] Ibid. p. 712.

Now why should we not be at liberty to suppose, that the same *may* have taken place in a decree, which we see *has* taken place in a law? It would be a groundless objection to say that this is a *law*, not proposed at the assembly, but in the court of the Nomothetæ: and that we cannot fairly infer from it what was the form of the decrees proposed in the assembly. For, as the whole proceedings in that court were conducted exactly similarly to those in the assemblies, there can be little doubt but that the laws proposed in the former closely resembled the decrees carried in the latter. Further, there is a law in Andocides[9] which is headed just as the decrees of that age usually are.

But in the above law of Timocrates, the number and day of the Prytany are expressed. And if we suppose the same to have been done in the original copy, but omitted in the transcript [147] of Demosthenes, there will be but very little difference between this and the third class of psephismata; which is what I meant, when I said before, that the change introduced about Ol. cxiv. was less than might at first sight appear.

CHAPTER XIII.

On the Dismissal of the Assemblies.

When all the business of the assembly had been transacted, the crier dismissed the people by command of the Prytanes who had before convened them. Thus in the Acharnenses Aristophanes represents the crier uttering the following proclamation:—

> τοὺς Θρᾷκας ἀπιέναι, παρεῖναι δ' εἰς ἕνην·
> οἱ γὰρ Πρυτάνεις λύουσι τὴν ἐκκλησίαν[1].

[9] De Myster. p. 13.

[1] Acharn. v. 171. λύειν and διαλύειν τὴν ἐκκλησίαν are the words peculiarly applied to the dismissal of the people from the assemblies. See Aristoph. Eccles. 377. Æschin. de Fals. leg. p. 262.

If one day was found to be insufficient for the discussion of the business before them, assemblies were sometimes held two days consecutively[2].

It was undoubtedly forbidden at Athens, as well as at Rome, to consult the people after sunset. At all events, they met always in the morning, not long after sunrise[3]; and this seems to have been the regular time of holding assemblies amongst the Greeks in all ages. For Homer, when he represents Agamemnon and Menelaus [148] as having convened the people in the evening, accuses them of having acted contrary to all rule[4]:

> καλεσσαμένω ἀγορὴν ἐς πάντας Ἀχαιοὺς
> μὰψ, ἀτὰρ οὐ κατὰ κόσμον, ἐς ἠέλιον καταδύντα.

If any one announced that he had observed an unfavourable omen in the sky, or perceived thunder or lightning, the assembly was immediately broken up. The same was done on the sudden appearance of rain, the shock of an earthquake, or such-like natural phenomena, which were called *διοσημίαι*[5]. These omens might be declared, not merely by the magistrates, as among the Romans, but by private individuals also, of which we have an example in Dicæopolis, in Aristophanes[6]:

> ἀλλ' ἀπαγορεύω μὴ ποιεῖν ἐκκλησίαν
> τοῖς Θρᾳξὶ περὶ μισθοῦ· λέγω δ' ὑμῖν ὅτι
> διοσημία 'στι, καὶ ῥανὶς βέβληκέ με.

Many signs of this description are enumerated by the chorus in the Nubes[7]:

> ἦν γὰρ ᾖ τις ἔξοδος
> μηδενὶ ξὺν νῷ, τότ' ἢ βροντῶμεν ἢ ψεκάζομεν·
> εἶτα τὸν θεοῖσιν ἐχθρὸν βυρσοδέψην Παφλαγόνα
> ἡνίχ' ἥρεισθε στρατηγὸν, τὰς ὀφρῦς συνήγομεν

[2] Æschin. de Fals. leg. p. 243. adv. Ctesiph. p. 458.
[3] Aristoph. Thesmoph. v. 375. Eccles. v. 85. and 290. Acharn. v. 20.
[4] Odyss. iii. 137. [5] See Suidas in v. [6] Acharn. 168.
[7] Nub. v. 579. seqq.

καὶποιοῦμεν δεινά. βροντὴ δ' ἐρράγη δι ἀστραπῆς·
ἡ σελήνη δ' ἐξέλειπε τὰς ὁδούς. ὁ δ' ἥλιος
τὴν θρυαλλίδ' εἰς ἑαυτὸν εὐθέως συνελκύσας
οὐ φανεῖν ἔφασκεν ὑμῖν.

And to the same superstition the following verses of Aristophanes[8] may likewise be referred:

σεισμὸς εἰ γένοιτο πολλάκις
ἢ πῦρ ἀπότροπον, ἢ διᾴξειεν γαλῆ,
παύσαιντ' ἂν εἰσφέροντες, ὦ 'μβρόντητε σύ.

We know on the authority of Thucydides, [149] that the assemblies were dismissed on account of an earthquake: σεισμοῦ δὲ γενομένου, (says that Historian) πρίν τι ἐπικυρωθῆναι, ἡ ἐκκλησία αὕτη ἀνεβλήθη[9].

If the assembly had been interrupted for any of the above reasons, before the business had been discussed and the decree passed, the people were ordered to attend on another day, which was very often the following one, for further deliberation upon the same subjects[1].

Before I conclude this book, it remains for me to make a few observations on a passage of Andocides, which Reiske, and perhaps others also, have falsely imagined to refer to the custom of dismissing the assemblies. It is in the oration *de Mysteriis*, where the orator, after premising that information had been given concerning the profanation of the Mysteries, and the mutilation of the Mercuries; that some had been arrested in consequence of that information, and imprisoned or capitally punished, and the search after the offenders was not yet over; describes the sudden panic and consternation which had pervaded the city on that account. Καὶ ἡ πόλις (he writes) οὕτω διέκειτο, ὥστ' ἐπειδὴ τὴν βουλὴν εἰς τὸ βουλευτήριον ὁ κήρυξ ἀνείπῃ ἰέναι καὶ τὸ σημεῖον καθέλῃ, τῷ αὐτῷ σημείῳ ἡ μὲν βουλὴ εἰς τὸ βουλευτήριον ᾔει, οἱ

[8] Eccles. v. 786.

[9] Thucyd. v. 45. Compare Plutarch, Nic. c. 10.

[1] Thucyd. v. 46. See also the Scholiast on Aristophanes, Acharn. v. 171.

δ' ἐκ τῆς ἀγορᾶς ἔφυγον, δεδιότες εἷς ἕκαστος μὴ συλλη-φθείη[2]. It is difficult to say what this σημεῖον is which is mentioned by the orator. Reiske, indeed, interprets it *signum, quod quamdiu esset sublatum, concio manebat; detracto autem, concio dissoluta erat. Tale quid* (he adds) *etiam apud Romanos in comitiis obtinuit.* He doubtless had in view that custom which prevailed among the Romans, of stationing a garrison in the citadel, under a flag, during the time of the Comitia Centuriata, whilst the people [150] were engaged in voting[3]. But these comitia were conducted in a manner entirely different from the Athenian Ecclesia. The flag was there hoisted to be, as Servius[4] observes, a mark *imperati exercitus;* the expression *imperare exercitum* merely meaning to *convene the people divided into centuries,* and to conduct some of them under the standard to the Campus Martius to vote, and station others by way of garrison in the citadel, that is, on the Janiculum[5]. Without this garrison the Comitia Centuriata could not be held; whence it was necessary to dismiss the people if ever the flag was taken down and the garrison marched off. An instance of this we find in the trial of Rabirius, when Metellus tore up the flag, and by breaking up the assembly, forced the people to retire without having voted[6]. This was not, however, the proper and regular mode of dismissing the assembly. Usually, the magistrates commanded the people to separate by the formula, "Si vobis videtur, discedite, Quirites[7]:" upon which they immediately broke up, and the flag and garrison were removed. But at Athens no flag was hoisted, no garrison stationed in the citadel, for the occasion of an assembly; although therefore some signal for assembling,

[2] De Myster. p. 6. 3. Steph.
[3] Lætus Felix, ap. Aul. Gell. Noct. Att. xv. 27.
[4] Ad Virg. Æn. viii. 1.
[5] Gronovius: to whom the reader is referred, Observat. i. 1.
[6] Dion Cassius, xxxvii. 27, 28.
[7] See Brisson, de Formulis, lib. ii. p. 191.

whether of the nature of a flag, or of some other description, (which point we shall presently discuss,) seems to have been commonly hoisted, still the custom should not have been compared with the one prevalent at Rome, which was in fact entirely different.

Much the same arguments have been lately adduced against Reiske's explanation, by that most acute and profound scholar, [151] Augustus Boeckh, who has offered another conjecture on the meaning of this disputed word *σημεῖον*[8]—a conjecture in which, though in the highest degree learned and ingenious, I confess I cannot entirely acquiesce. Whether my own view be more probable, others of course must judge: and that none will do so with greater impartiality than Boeckh himself, I feel well assured.

In the first place, then, Boeckh has sufficiently proved (what indeed must be clear to every one who has read the whole passage of Andocides with attention) that no mention is there made of an assembly. In fact, the very words *οἱ δ' ἐκ τῆς ἀγορᾶς ἔφυγον*, alone prove that the transaction took place in the Agora, and not at the assembly; for the Attic writers of this period never call the place of meeting *ἀγορά*. To me it appears certain, that the words of Andocides; *καὶ ἡ πόλις οὕτω διέκειτο, κ. τ. λ.* are not meant to imply what took place merely on one day, but what continued during the whole time of that investigation. In another passage the orator, speaking about the same subject, says, *ἀναμνήσθητε ἐν οἵῳ κινδύνῳ τε καὶ ἀμηχανίᾳ καθέστατε, καὶ ὅτι οὕτω σφόδρα σφᾶς αὐτοὺς ἐπεφόβησθε, ὥστ' οὐδ' εἰς τὴν ἀγορὰν ἔτι ἐξήειτε, ἕκαστος ὑμῶν οἰόμενος συλληφθήσεσθαι*[9].

Since, then, the word *σημεῖον* has no reference to the assemblies, Boeckh supposes it to have been the public

[8] Index Lection. Univers. Berolin. for the summer of 1817.

[9] Andocid. de Reditu suo, p. 20. 37. Steph. In the former passage of Andocides, (quoted in p. 148.) instead of the conjunctives *ἀνείπῃ* and *καθέλῃ*, which are evidently wrong, it appears that we should write *ἀνεῖποι* and *καθέλοι* [which have been restored by Bekker from his MSS. A and B.]

seal of the city, with which the doors of the senate-house used to be closed. "As often, therefore," says he, "as the senate had to go into the senate-house, [152] this seal was to be taken off by the command of the Prytanes, and by the same crier who had just before summoned the senators by proclamation in the Agora. And this is, in our opinion, *τὸ σημεῖον καθελεῖν*." As to his opinion about the doors of the senate-house being sealed up, I myself agree in its probability. And I will also admit, that there is no very great harshness in using, in the passage following, the same word *σημεῖον* in a different signification. For why should Andocides so fastidiously have avoided a play upon the sense of the two words, (particularly if it came naturally,) when Cicero[1] has studiously adopted it in a letter to Atticus, in which he says, "Illa signa non bona, si cum signis legiones veniunt è Galliâ." I must however confess it seems strange to me, that Andocides should have used that expression which no one (as far as I know) has ever applied to the opening of doors, even when sealed, and rejected the one sanctioned by common use. For Demosthenes also, in the two passages pointed out by Boeckh, uses the phrase *ἀνοίγειν τὴν θύραν*, although the door was sealed up[2]. Lastly: though the expression *ἀφελεῖν τὸ σημεῖον* be used, I much doubt whether *καθελεῖν τὸ σημεῖον* be correct. For such seals were not *pulled down* from a higher place, nor were they destroyed.

My own conjecture about the meaning of this knotty word *σημεῖον* in Andocides, is this. I imagine it to have been a signal, (of what form I cannot pretend to surmise, but probably resembling a flag,) [153] which, when hoisted, gave notice that it was time for the senators to

[1] Cic. Ep. ad Att. xiv. 5.

[2] Demosth. in Phænipp. p. 1039. *ἀντὶ δὲ τοῦ τὰ σημεῖα ἐᾷν τῶν οἰκημάτων ἃ παρεσημηνάμην, ἐλθὼν εἰς ἀγρὸν ἀνέῳξε καὶ τὰς κριθὰς ἐξεφόρησε.* p. 1041. *παρεσημηνάμην τὰ οἰκήματα, τοῦ νόμου μοι δεδωκότος· οὗτος ἀνέῳξε. καὶ τὸ μὲν ἀφελεῖν τὸ σημεῖον ὁμολογεῖ, τὸ δ' ἀνοῖξαι τὴν θύραν οὐχ ὁμολογεῖ, ὥσπερ ἄλλου τινὸς ἕνεκα τὰ σημεῖα ἀφαιροῦντος ἢ τοῦ τὰς θύρας ἀνοῖξαι.*

meet, and when removed, after they had assembled inside the house, shewed the late-comers that there was no admittance. At all events this custom prevailed in the law courts, as is implied by the following verses in the Vespæ of Aristophanes[3]:

ὅστις ἂν ὑμῶν
ὕστερος ἔλθῃ τοῦ σημείου, τὸ τριώβολον οὐ κομιεῖται.

ὡς ἔθους ὄντος, says the Scholiast, πρὸς σημεῖόν τι ἐκκείμενον ἀθροίζεσθαι τοὺς δικαστάς. And that those who came too late were not admitted, we may infer from the following verses in the same play, where Bdelycleon, under the character of a crier, gives out[4]:

εἴτις θύρασιν ἡλιαστὴς, εἰσίτω.
ὡς ἡνίκ' ἂν λέγωσιν οὐκ εἰσφρήσομεν.

My suspicion therefore is, that something similar prevailed also when the senate was being convened.

But to return to the subject of the assembly. Aristophanes expressly mentions a σημεῖον, or signal, made use of in collecting the people into the Pnyx. In his Thesmophoriazusæ, Euripides is supposed to understand, by the signal hoisted on the top of the temple of Ceres and Proserpine, that the women are assembling[5]:

ἔκσπευδε ταχέως· ὡς τὸ τῆς ἐκκλησίας
σημεῖον ἐν τῷ Θεσμοφορίῳ φαίνεται.

I imagine that this signal also was raised to shew the time for assembling; and this opinion is confirmed by the words of Suidas in v. ὅτε δὲ ἔμελλε γίνεσθαι ἐκκλησία, σημεῖον ἐτίθετο. οὕτως οὖν καὶ τῶν γυναικῶν μελλουσῶν ἐν τοῖς Θεσμοφορίοις ἐκκλησίαζειν, σημεῖον ἐτέθη. Here then is one of many instances, in which Aristophanes seems to have transferred the real customs of the ecclesia to the sham meeting of the women.

[3] V. 689.
[4] Vesp. v. 891.
[5] Thesmophor. v. 277.

THE

ASSEMBLIES

OF

THE ATHENIANS.

BOOK II.—CHAP. I.

On the different kinds of Subjects which were proposed for discussion at the Assemblies.

Having thus, in the preceding book, given an account of the manner in which the assemblies were held, and presented the reader with a sketch of what may be termed their external form; it now remains for us to discuss, with all the accuracy in our power, what subjects were there submitted to the deliberation of the people; and to examine what power the latter were privileged to exercise in determining upon them. In our investigation, however, of these questions, it can hardly be expected that we should be able to determine with precision and accuracy every single point, when the laws themselves appear to have prescribed nothing fixed and invariable upon the subject, but the power of the senate and people, and the affairs which came under their respective administration, to have varied according to the circumstances and character of the times. We may, however, safely venture this assertion; that there was nothing in any way relating to the administration, or connected with the general interests of the state, in which the people had not supreme control and the right of exclusive arbitration. They at least had the power either to depute their own authority

to others[1], if they did not choose to exercise it themselves in every case (a thing in fact impracticable in such a multitude and variety of state business), or to assume, whenever there seemed occasion, the prerogative of deciding entirely according to their own discretion.

[156] Now Aristotle arranges under three classes all such business as is usually comprised by the term *state affairs*. In the first he comprehends all measures concerning war, peace, confederacies, and alliance; in the second, the legislature; in the third, the exercise of judgment on the persons (i. e. on the death, banishment, or confiscation of property) of the citizens, and the scrutiny into the conduct of the magistrates[2]. There were, however, additional subjects, which the Athenians used equally to take into consideration at their assemblies. These were, questions concerning the tributes and taxes; the expenditure of the public money; the propriety of conferring honorary rewards upon citizens, or even aliens, for some distinguished services—among which may be classed the presentation of the rights of the state to the latter; the superintendance and direction of certain public sacred rites and festivals; and lastly, various incidental circumstances, which being only of occasional occurrence, could not be defined by any certain name or comprised under any one class. Perhaps we may lay down, *generally, four* classes of business, over which the body of the people exercised supreme control: the judicature, the legislature, the foreign, and the domestic policy.

The power over all these matters was either wholly or partially vested in the body of the people; and was exercised by them either regularly on all occasions, or at times only and under peculiar circumstances. [157] All

[1] Allusion is made to this privilege when we read that the senate was appointed by the people *κυρία, supreme,* over any affair (Demosth. de Fals. leg. p. 389), or that the same power was given by them to the Areopagus (Demosth. de Coron. p. 271). In Aristoph. Vesp. v. 588, Philocleon remarks;

Ἔτι δ' ἡ βουλὴ χὠ δῆμος ὅταν κρῖναι μέγα πρᾶγμ' ἀπορήσῃ,
Ἐψήφισται τοὺς ἀδικοῦντας τοῖσι δικάσταις παραδοῦναι.

[2] Aristot. Polit. iv. 14.

ordinary trials, for instance, public as well as private, and on capital as well as minor charges, were (with the exception of a few which came under the cognizance of the Areopagites or Ephetæ) held always by the Heliasts or other regular judges appointed by lot: but the extraordinary ones solely by the senate and people. With regard to the legislature, the ancient principle was to confer less power on the people in passing and abrogating laws, and greater upon the Nomothetæ of their appointment: though in later times this principle was almost constantly violated. In all other matters it is difficult to determine how far the authority of the senate was distinct from the power of the people in every individual case; but we may safely assert that in general the people alone had the control over the more important affairs of the state, and that it was only in matters of less consequence that the senate could determine of itself, and without having its decision ratified by the vote of the people[3].

Julius Pollux furnishes us with an exact enumeration of the various business which used to be transacted in the assemblies. In the first [158] assembly of every Prytany, which was called *κυρία*[4], an *ἐπιχειροτονία*, as it was termed, of the magistrates was instituted: that is, an examination into their conduct, in which all who were found

[3] Ulpian (ad Demosth. adv. Aristocrat. p. 417) makes a distinction between those decrees of the senate which required ratification by the people, an those which did not. The latter he calls *ἐπέτεια*, the former not so. *ὅσα μὲν οὖν ἴδια τῆς βουλῆς ψηφίσματα ἦν, ταῦτ' ἦν ἐπέτεια, καὶ συναγηρεῖτο τῇ βουλῇ μετ' ἐνιαυτὸν παυομένῃ. ὅσα δὲ ἀπὸ τῆς βουλῆς ἔδει πρὸς τὸν δῆμον πεμφθῆναι, καὶ τὸ κῦρος παρ' αὐτοῦ λαβεῖν, ταῦτα οὐκ ἦν ἐπέτεια.* But from the context alone of the oration on which this remark is made, it is evident that the distinction which he draws is groundless, and that all decrees whatever of the senate, not excepting the *προβουλεύματα*, were to continue in force for the year at least, unless the people had voted to the contrary in the assembly. For in that case it is clear that the decrees must have become invalid immediately. There are however yet extant some decrees of the senate which seem to have been intended to continue in force for more than a year, as we may surmise from the nature of them, as well as from the fact of their being engraved on stones. See Biagi, de Decret. Ath. chap. xx.

[4] See book i. chap. 1. p. 26, seq.

wanting, were deposed from the office. To this assembly also was appropriated the cognizance of those *extraordinary informations* called εἰσαγγελίαι; and the lists of confiscated property, and the names of those citizens who had entered upon inheritances were then read. The second assembly was devoted to hearing the appeals of those who came before the people with a suppliant branch, in token that they petitioned for leave to speak upon any public or private business. In the third, ambassadors from foreign states had an audience. In the fourth, religious matters, and various business of the state, were discussed[5].

We are told[6], that in some states, which approached nearer to the aristocratic than the democratic form, as at Sparta, the law enjoined that all the power exerted by the people in assembly should consist solely in ratifying or rejecting by vote the bills of the senate; and that no one of them should presume to propose any motion contrary to the opinion of that court. We have already seen, however, that the case was far otherwise at Athens. But in that state, that the influence of the demagogues and seditious mob-orators of the day might not proceed to uncontrolled and intolerable licence, two most sagacious remedies were devised by Solon. The first was, that no decree should be proposed by any one to the people, unless previously approved of by the Proedri and Nomophylaces, who sat under the bema during the time of the assembly[7]: the second, that if any person introduced a bad or pernicious law, he might be accused of unconstitutional measures (παρανόμων) by any citizen who pleased; [159] and upon his conviction the law of which he had been the author became invalid. Upon the subject of this action (γραφὴ παρανόμων) it will be expedient to premise a few observations, before we enter into the discussion of each individual point.

[5] Pollux, viii. 95. Compare Harpocration in v. κυρία ἐκκλησία.

[6] Plutarch, Lycurg. c. 6.

[7] See book i. chap. 11.

CHAPTER II.

On the Action for unconstitutional Measures (γραφὴ παρανόμων).

If any person conceived that he could detect, in a decree proposed to the people, some clause at variance with the ancient laws, or hostile to the interests of the state, or objectionable on any other grounds; he might rise and declare before the people, by an oath which was called *ὑπωμοσία*, that he intended to prosecute the author of that decree for an unconstitutional measure. The word *ὑπωμοσία* properly signifies any oath, which a person is bound to take when he applies for the adjournment or arrest of some action in progress against him. Thus in law, the oath which was taken on alleging any just cause for suspending a trial was called *ὑπωμοσία*. Harpocration writes: *τὸ ὑπερτίθεσθαι δίκην, προφάσει χρώμενον ἀποδημίᾳ, ἢ νόσῳ, ἢ τινι τῶν παραπλησίων μεθ' ὅρκου, οὕτως ἐλέγετο· καὶ τὸ ποιεῖν τοῦτο ὑπόμνυσθαι, ὡς ἔκ τε ἄλλων δῆλον, καὶ ἐκ τοῦ Δημοσθένους κατ' Ὀλυμπιοδώρου λόγου*[1]. Since, therefore, in the assembly also, the individual who declared that he would prosecute the author of a motion [160], caused the *adjournment* of that motion for the present at least, it is natural that the term *ὑπωμοσία* should have been extended to the oath which he took to that effect, and that he should himself be said *ὑπομόσασθαι*[2]. Julius Pollux gives the following expla-

[1] Harpocrat. in v. *ὑπωμοσία*, where see Valesius, p. 192. The passage in Demosthenes to which the Grammarian alludes, is in Olympiodor. p. 1174. On the various kinds of *ὑπωμοσία* Hudtwalcker has given a most excellent dissertation, de Diætetis, p. 91—7.

[2] Thus Matthiæ (de Judic. Athen. P. 2. p. 265.) has correctly explained this signification of the word. Compare Luzac, p. 119. The author of the Rhetorical Lexicon is not to be attended to, when he says (Bekker, Anecd. 1. p. 313.) *Ὑπωμοσία· ὁπόταν τις νόμον ὑπ' ἄλλου εἰσηγηθέντα γράψηται παρανόμων, ἢ αὐτὸς ὁ εἰσηγησάμενος καταγνοὺς αὐτοῦ ἐξομόσηται παραλελογίσθαι. ὑπωμοσία δὲ ἐκλήθη, ὅτι ὀμνύντες οἱ εἰσηγησάμενοι, μήτε ἐπ' ἀργυρίῳ τὸν νόμον θέσθαι μήτε κατὰ χάριν, ἀπελύοντο.* That any one could withdraw his motion

nation of the word ὑπωμοσία:—ὑπωμοσία δέ ἐστιν, ὅταν τις ἢ ψήφισμα ἢ νόμον γράφοντα γράψηται ὡς ἀνεπιτήδειον: and in another place:—παρανόμων δὲ (ἦν γραφὴ) εἴ τις ψήφισμα γράφοι ἢ νόμον παράνομον. ὑπομοσάμενος γάρ τις τὸ γραφὲν, οὗ ἡ κατηγορία ὑπωμοσία ἐκαλεῖτο, διήλεγχεν ὅτι ἐστὶ παράνομον, ἢ ἄδικον, ἢ ἀσύμφορον[3]. I do not intend to deny the truth of this statement, that the action itself was called ὑπωμοσία, but I insist that ὑπωμοσία properly means nothing more than *the oath by which any person engages to prosecute the proposer of an unconstitutional measure.* And that this oath was actually tendered in assembly before all the people, seems capable of proof from a passage of Xenophon, [161] in his account of the celebrated trial of the ten generals. Euryptolemus had there suggested that the votes of the people should be taken on each individual separately, in conformity with the decree of Cannonus, and not on all at once, as the senate had proposed. The historian proceeds: τούτων δὲ διαχειροτονουμένων, τὸ μὲν πρῶτον ἔκριναν τὴν Εὐρυπτολέμου· ὑπομοσαμένου δὲ Μενεκλέους, καὶ πάλιν διαχειροτονίας γενομένης, ἔκριναν τὴν τῆς βουλῆς[4]. The whole chain of the narration implies that every thing was done on the same day and in the same assembly. The Chairman on the occasion happened to be Socrates, who objected to the vote of the people being taken on all the ten at once, and refused to allow the people on that condition to vote at all. Either, however, he did not think it right to interfere in forbid-

we have already shewn from Plutarch, Aristid. c. 3.: but that this was called ὑπωμοσία is both exceedingly improbable, and unsupported by the testimony of any writer except this single Grammarian. His assertion, that the accused might always be acquitted upon taking an oath that they had not been induced by the hope of gain or favour to bring forward their motion, is truly ridiculous. In that case very few would have had the honesty to let themselves be condemned.

[3] Pollux, viii. 56. and 44. Hesychius (tom. i. p. 382.) confounds ἀνθυπόμνυσθαι with ὑπόμνυσθαι. Ἀνθυπόμνυσθαι, τὸ ἀναβάλλεσθαι δίκην ἢ χειροτονίαν μεθ' ὅρκου. Χειροτονία is here undoubtedly to be referred to our kind of ὑπωμοσία.

[4] Xenoph. Hellen. i. c. 7. §. 38.

ding this διαχειροτονία on the motion of Euryptolemus and the decree of the senate to which Euryptolemus objected, or his interference was not attended to—a thing by no means extraordinary in such a host of seditious rabble. The trial itself, on which the unfortunate generals were condemned, appears to have terminated on the next day, when Socrates was no longer in office [5].

We have another instance of a γραφὴ παρανόμων [162] being threatened in the assembly, in the same narrative of Xenophon. Callixenus, by order of the senate, had put the question to the people, Whether they were of opinion that the votes should be taken upon all the generals at once, and whether, if they were condemned, they should be delivered to the Eleven for capital punishment? Upon this, Euryptolemus and others rose and threatened Callixenus with an action of παράνομα. Τὸν δὲ Καλλίξενον προεκαλέσαντο (read προσεκαλέσαντο) παράνομα φάσκοντες ξυγγεγραφέναι, Εὐρυπτόλεμός τε ὁ Πεισιάνακτος, κ. τ. λ.[6] But the lawless vociferations of the mob compelled them to desist, and they were not allowed to take the oath: ἐπεθορύβησε πάλιν ὁ ὄχλος, καὶ ἠναγκάσθησαν ἀφιέναι τὰς κλήσεις.

[5] Xenophon indeed does not determine the time:—καὶ μετὰ ταῦτα κατεψηφίσαντο τῶν Στρατηγῶν. But the author of the Axiochus, ch. 12. distinctly states τῇ ὑστεραίᾳ προέδρους ἐγκαθέτους ὑφέντες, κατεχειροτόνησαν τῶν ἀνδρῶν ἄκριτον θάνατον. Who these ἐγκάθετοι πρόεδροι were, Luzac describes, Disquisit. de Epist. ac Proedr. §. 15. I conceive the whole order of the transaction to have been this. The sole motive of Menecles' ὑπωμοσία was, to prevent the trial from taking place that day according to the decree of Euryptolemus: for the affair would have had to be decided in court, and Euryptolemus accused of παράνομα. If he had been found guilty, his decree would have become invalid, and another might have been proposed, or the bill of the senate again brought forward to the people. But in this cause the regular order was not observed; there is no mention made of a trial for παράνομα, but the people are allowed to vote a second time upon the decree of Euryptolemus and the bill of the senate;—a proceeding which was unquestionably illegal. It is clear, therefore, that this second διαχειροτονία took place either against the will of Socrates, or, which I think more probable, on the following day, when he was no longer in office.

[6] Hellen. i. 7. 12, 13. On the words κλῆσις and προσκαλεῖσθαι, see Valckenär ad Ammon. p. 127. Matthiæ de Judic. Athen. P. 2. p. 257.

In the Plutus of Aristophanes[7], Æsculapius, after having anointed the eyes of Neoclides, leaves him with the consolatory advice

> Ἐνταῦθα νῦν κάθησο καταπεπλασμένος,
> Ἵν' ἐπομνύμενον παύσω σε τῆς ἐκκλησίας.

Now in this passage the question is, what is meant by the word *ἐπομνύμενον*. Some have supposed it to bear the same sense as *ὀμνύμενον, that I may stop you from going and swearing at the assembly*. But what can be meant by *swearing?* Injuring the state by fraud and perjury, says Ducker. But the mere verb *ἐπόμνυσθαι* cannot bear this sense. Spanheim explains it in the following way: "I will prevent you from attending the assemblies for the future, and from being thought to have perjured yourself [163] in swearing that you were unable to attend from illness." But I confess I do not quite see how all this is to be elicited from the Greek. The explanations of two Scholiasts lead us to infer that they confounded *ἐπόμνυσθαι* and *ὑπόμνυσθαι, ἐπωμοσία* and *ὑπωμοσία*[8]. For my own part, I despair of the possibility

[7] Plut. v. 725.

[8] Schol. 1. Ἀντὶ τοῦ ἐκκαλούμενον. ἐπωμοσία δέ ἐστιν, ἣν ἐπιδίδωσιν ὁ βουλόμενος ἀντειπεῖν ψηφίσματι εἰσφερομένῳ· ἐκκαλοῦνται δὲ εἰς τὸ δικαστήριον πολλάκις. (The word ἐκκαλεῖσθαι I imagine the Grammarian to have written for the word which he ought to have used, προσκαλεῖσθαι.) Σαλούστιος δέ φησιν, ὡς μέλλοντες εἰς τινὰ δημοτικὴν ἀποστέλλεσθαι χρείαν παρὰ τοῦ δήμου, πολλάκις ἐπωμνύοντο μὴ δύνασθαι αὐτὸ ποιεῖν, ἵνα συκοφαντῶσιν οἵκοι μένοντες. It is rather singular if Salustius said this; since this is ἐξωμοσία, not ἐπωμοσία. For the same reason, the explanation of the above passage proposed by some of the more recent editors is inadmissible;—"ut meâ operâ desinas interesse concioni, possisque eam ejurare." Such a method of declining them by oath, of which I confess I am at a loss for an example, would have been ἐξωμοσία.—Schol. 2. Ἐπωμοσία ἐστὶν ἀπόδοσις αἰτίας, δι' ἣν οὐχ ὑπαντᾷ τις πρὸς τὴν δίκην. Ὑπερίδης· καὶ ἐμοὶ μὲν συμβάσης ἀρρωστίας, καὶ ὑπομοσθείσης ταύτης τῆς γραφῆς, ἀνεβλήθη ὁ ἀγών. The rest it is unnecessary to add. It is clear, particularly from the passage of Hyperides which this Scholiast adduces, that he too has confounded *ὑπόμνυσθαι* and *ἐπόμνυσθαι*; although that kind of *ὑπωμοσία* which he alleges has nothing to do with the passage before us. The third Scholiast is but a trifler, and has mistaken the ecclesia for the court;—an error which I have before observed is of frequent occurrence among the

of attaching any plausible meaning to this word *ἐπομνύμενον*, and would therefore read with Girard, Brunck, and others,

Ἵν' ὑπομνύμενον παύσω σε τῆς ἐκκλησίας.

The sense will then be this: Neoclides being a notorious *Συκοφάντης* of the day, had frequently abused the privilege of *ὑπωμοσία* by bringing groundless and vexatious charges: for which reason Æsculapius, *φιλόπολις δαίμων καὶ σοφὸς*, smears his eyes with some acrid application, [164] in order to stop him from attending the assembly, and thus unwarrantably interfering for the future, on account of his blindness.

It may be observed, that as this *ὑπωμοσία* always preceded a *γραφὴ παρανόμων*, the sense is in many passages the same, whether *ὑπομόσασθαι* or *γραφὴν παρανόμων γράψασθαι* be written. Thus the Pseudo-Plutarch[9] says of Demosthenes, *πρῶτος δὲ ἔγραψεν αὐτὸν στεφανωθῆναι χρυσῷ στεφάνῳ Ἀριστόνικος Νικοφάνους Ἀναγυράσιος, ὑπωμόσατο δὲ Διώνδας.* But in another place[1] the same author writes upon the same subject as follows: *Ἔγραψεν (ὁ Ὑπερίδης) καὶ Δημοσθένους τιμάς· καὶ τοῦ ψηφίσματος ὑπὸ Διώνδα παρανόμων γραφέντος, ἀπέφυγε.* Hence Pollux appears to be correct in his statement that the action itself for unconstitutional measures was called *ὑπωμοσία*[2].

The method of instituting this action, by interposing the oath at the assembly, either before or after the votes were given[3], appears to have been the most common,

Græculi of a later age. I need scarcely observe that the explanation of the second Scholiast has originated from the same confusion.

[9] In the Lives of the Ten Orators; in Demosth. tom. ii. p. 848, c.

[1] Hyperid. ib. p. 848, E. On the history, see Demosth. de Coron. p. 302.

[2] viii. 44. I surmise that this is the sense in which Demosthenes has used the word in the Oration de Coronâ, p. 260. *καταβαλόντα ἐᾷν τὸν νόμον ἐν ὑπωμοσίᾳ*—although the passage may be, and generally is, explained otherwise.

[3] *Before;* Xenoph. Hellen. i. 7, 12. *After;* Ib. 38. In the former case, the *ὑπωμοσία* prevented the *διαχειροτονία* from taking place; in the latter, the decree which had been approved by the people from becoming valid till after the trial. Pollux, viii. 56. *καὶ οὐκ ἦν μετὰ τὴν ὑπωμοσίαν τὸ γραφὲν, πρὶν κριθῆναι, κύριον.*

though by no means the only one. There can be no doubt that a bill of the senate, notified in the program some days previous to the assembly at which it was to be proposed, could be prosecuted before that assembly was held[4]: and the same could be done even after [165] it had been adopted by the votes of the people. The latter case seems to have been chiefly applicable to those decrees which were proposed without the previous sanction of the senate[5], because the Prytanes could not give notice of such *ψηφίσματα ἀπροβούλευτα* before the day of assembly.

If any one engaged by *ὑπωμοσία* in the assembly, that he would prosecute a measure as unconstitutional, or purposed doing so to a bill of the senate publicly notified in the program beforehand, or to a decree after it had been passed at the assembly; he had to issue a summons against the author of it, and apply to the Archon Eponymus[6] or one of the Thesmothetæ for leave to bring on the action against him, at the same time delivering the name of the accused. After these preliminaries, the action was conducted, as was usual in other public trials, by *ἀντωμοσία*[7],

[4] At all events there is nothing in the Oration of Æschines against Ctesiphon, and in that of Demosthenes against Aristocrates, from which we can infer that the laws of Ctesiphon and Aristocrates had been already proposed to the people.

[5] Of this description is the law of Androtion, which Demosthenes impugns. That this had been already passed at the assembly is evident from the words of the Oration itself, p. 594: *ταῦτ' ἐπήρετο, φησὶν, ὁ ἐπιστάτης. διεχειροτόνησεν ὁ δῆμος. ἔδοξεν.—κατὰ τὸν νόμον ἦν τὰ γινόμενα.*—Compare Plutarch, Lives of the Ten Orators, in Lysias, tom. ii. p. 835, F.

[6] See Petit, p. 183. Wolf, Prolegom. ad Demosth. Lept. p. cxxxix. not. 143. The summons, *κλῆσις*, or *πρόσκλησις*, was issued before the name of the accused was given in, and leave to bring on an action requested; as we know to have been the case, in this cause of *παράνομα*, from Xenophon, ut sup. §. 12; and in other causes, from Aristophanes, Vesp. 1397, 1408; Nub. 1223, 1280; Av. 1046. It was not necessary to have the summons issued by authority of a magistrate, as Matthiæ supposes, de Judic. Ath. P. 2, p. 257.

[7] Hudtwalcker de Diætet. p. 96, supposes without just grounds that what was called *ἀντωμοσία* in other trials was called *ὑπωμοσία* in cases of *γραφὴ παρανόμων*.

ἀνάκρισις, *κατηγορία*, *ἀπολογία*, and the other customary forms, which, as [166] they may be fully and easily learned from other works[8], I shall not dwell upon in this place. The cause was tried by the judges of the Heliæa; and was one of those in which the assessment was made by the accuser, while the accused might make a counter-assessment, that is name some other penalty to be imposed upon himself; and the judges decided between the two. These trials were called by the Athenians *ἀγῶνες τιμητοί*. It is therefore plain that there were various kinds and degrees of punishment to which the convicted were liable; and that these were proportioned to the amount of their offence, or regulated by the inclination and disposition of the prosecutor[9]. The penalty was usually a fine, but sometimes capital punishment. To avoid the risk, naturally arising from so unlimited a permission to prosecute, of malicious informers bringing vexatious charges on the slightest grounds, any accuser who had failed in his prosecution, and not obtained a fifth part of the votes, was fined a thousand drachmæ, and punished with that description of partial *ἀτιμία* which disqualified him from bringing any accusation for the future: a custom which prevailed also in other public trials. If any person omitted to carry on an action for *παράνομα* which he had commenced, he appears to have been liable to punishment[1].

The grounds of prosecution against a decree lay either in its contents or the manner of its being proposed[2].

[8] Above all others, from Matthiæ's invaluable work de Judic. Athen. P. 2, p. 256, seq.; See Wolf, ut sup. p. cxxxvii.

[9] Numerous examples may be found in Boeckh. Publ. Œcon. i. p. 411.

[1] See Hudtwalcker de Diætet. p. 159, seq.

[2] Some may be of opinion that I ought to have included under a third head the *character* of the author, from observing in Demosthenes' oration against Androtion that the accused is impeached on the ground of having prostituted his chastity, and objected to on that account as unfit to propose a motion to the people. But I think there is truth in the answer of Androtion, that this charge has nothing to do with *γραφὴ παρανόμων*, but should have been prosecuted in another court by *ἐπαγγελία*. See p. 600, seq. This is made probable also by the answer of the Orator.

[167] To the former head must be referred any clause which it might contain contradictory to the established laws. The following provision was made by Solon to that effect: *ψήφισμα δὲ μηδὲν, μήτε βουλῆς μήτε δήμου, νόμου κυριώτερον εἶναι*[3]. This law is quoted by Demosthenes in his oration against Aristocrates, a great part of which turns upon this particular point. In the oration also of the same orator against Androtion, and in that of Æschines against Ctesiphon, the circumstance upon which both of them particularly insist, is that the measures proposed by Androtion and Ctesiphon were illegal. To the same head also must be referred any falsehood contained in a decree, or any dishonest plea by which the author had endeavoured to recommend his motion to the notice of the people. These are the grounds on which Æschines accuses Ctesiphon, asserting that it was not true that Demosthenes deserved the honour of a crown for any signal services conferred on the state. He contends that on the contrary he had always proved himself a bad citizen, and that Ctesiphon ought to be convicted for having violated the law which provides *μηδένα ψευδῆ γράφειν ἐν τοῖς δημοσίοις ψηφίσμασι*[4]. And Demosthenes brings a similar accusation against Aristocrates, when he contends that Charidemus is unworthy of the honour which that individual is desirous of having conferred on him, and that all his fine speeches about the zeal and anxiety of Charidemus to promote the welfare of the state, are entirely groundless and unwarrantable.

[168] Lastly, to the same head as the two former belong all those bills which contained any thing adverse to the interests of the state; and these were the grounds on which Androtion and Aristocrates were accused by De-

[3] Demosth. adv. Aristocrat. p. 649. In Reiske's edition the text stands as I have quoted it: in the earlier editions *μήτε νόμου* is read. I have not now time to discuss the respective merits of the two readings. We may observe that if any motion was at variance with another decree still in force, the proposer of it could be prosecuted for *παράνομα*, as we may infer from the oration de Halones. p. 82. 83.

[4] Æschin. adv. Ctesiph. p. 439.

mosthenes, to whom we may add Timocrates and Leptines, although the plea of prosecution against the two latter was not precisely of the same nature as that of which we are speaking[5].

The second head, which relates to the manner of proposing a decree, comprises only one case; which was when any one had proposed a motion properly requiring the previous approbation of the senate, without having applied to it for permission:—for that *all* did not require this permission, we have before observed[6]. On this point a considerable part of the oration against Androtion turns; it was on these grounds that Aristogiton was accused by Phanostratus, for proposing the capital condemnation of Hierocles[7] without having previously obtained the sanction of the senate; and Thrasybulus by Archinus, for having neglected the same form in proposing that the freedom of the state should be conferred on Lysias the orator[8].

It will be easily seen from the above remarks, to what extent this species of accusation prevailed, and of what importance it was in the administration of the state. As there was not a single measure which could be proposed or passed in the assembly without being liable to be prevented, or at least adjourned, by a prosecution of this kind, the good citizen had always a remedy against the blind impetuosity of the demagogues and the temerity of the people, and the malicious informer [169] an opportunity of indulging his propensities for slander and disturbance. In the times immediately after Solon, while the salutary regulations of the good old discipline were yet unimpaired by the innovations of subsequent ages, and when the ignorant rashness of the lower classes had no room to display itself either in the courts or the

[5] The reader need hardly be apprised, that we are at present speaking only of those actions which were instituted against *decrees* (ψηφίσματα), not those against *laws* (νόμοι).

[6] Book I. chap. ix.

[7] Vid. Liban. in Argum. orat. i. adv. Aristogit. p. 767. 768.

[8] Plutarch, Lives of the Orators, in Lysias, tom. ii. p. 835. F.

assemblies, the necessity for such accusations was less, and the cognizance taken of them proportionably more strict, while at the same time the opportunity of inflicting malicious injury was of less frequent occurrence. But when, in later times, most of the wise institutions of that consummate legislator had one by one become corrupt or obsolete, and the poorest and lowest of the rabble had been lured by the offer of payment to attend the assemblies, and sit as judges in the courts; then at length the administration of the state was conducted without prudence, and the judicature without integrity or firmness; then arose the seditious and mercenary demagogue, more intent on his own interest than the welfare of the state, to cajole and mislead the ignorant multitude—for such were the mass of those who frequented the assemblies and courts—by his pernicious counsels and dangerous eloquence. The natural consequence of such a deterioration in the constitution, was an enormous increase in the number of these accusations of which we have been speaking. There were some who had been tried for *παράνομα* above *seventy times:* and Cephalus was celebrated as being a memorable and solitary instance of a citizen, who, having taken an extensive and active part in the management of the state, and proposed numerous decrees, had never once been impeached on that account by any one[9].

It was found however at Athens, as in such a state it inevitably must, that the very precaution which the legislator introduced to protect the good against the wicked designs of the bad, was, by a direct misapplication, made use of by the bad to annoy and harass the good[1]. Thus what Solon intended to be the bulwark of well equalized liberty, was, after the decline in the republic, [170] made the instrument of strengthening and establishing the licence of a democracy. Can we then wonder that the senate of four hundred, when it attempted, towards the

[9] Æschin. adv. Ctesiph. p. 583.

[1] Compare the Oration in Theocrin. p. 1332-3.

conclusion of the Peloponnesian war, to apply the necessary remedy to the state which was labouring under excess of liberty, should have been most anxious to remove these prosecutions for unconstitutional measures[2]? Or do we think it strange, that the Thirty who succeeded them, and were in all other respects as different as possible from them[3], should have followed their example in this single instance?

CHAPTER III.

On the Information against Extraordinary Crimes, εἰσαγγελία, laid before the Senate or the People.

We have before remarked, that there were four especial branches of the administration, of which the people had the management and direction in the assemblies. Of these four we will first consider the subject of the judicature. Now it is a well known fact, and one to which we have before alluded, that Solon so constituted and arranged this department of the state, that the cognizance of all causes, both public and private, was ordinarily referred to the judges of the Heliæa, the Areopagites, and the Ephetæ; while *extraordinary* cases only, involving crimes of a deeper cast, were submitted to the decision of the people in assembly, or at least referred to them that they might determine by what form they should be finally tried. For there were some extraordinary public crimes, which properly were, or at all events might be, referred to the senate or the people, in order that the accused might be either tried by them, or brought up for sentence, by their command, before the court of the Heliæa. In order that this subject may be more easily and clearly understood, it will be expedient

[2] Thucydides, viii. 67.

[3] Æschin. adv. Ctesiphont. p. 580.

first to take a brief sketch of the nature of public crimes and public [171] trials in general; a sketch, however, which must not be expected to furnish a complete elucidation of all the difficulties attending the subject, since neither the time will allow nor my power enable me to satisfy those who are desirous of finding a full and minute treatise upon the question. In fact the difficulties to which I allude are neither few nor trifling, when we come to consider why the Athenians should have chosen to take cognizance of different crimes in different ways, or appointed different actions, as they frequently did, for similar, or even the same offences. It is certain too that they did not in all cases follow any fixed and settled system. In many they were desirous of conforming to the peculiar constitution of the state, the customs of the citizens, or the habits of private and public life. In some they consulted the advantage and means of those who wished to bring any accusation, in order that it might be less troublesome and hazardous for them to obtain at the hands of justice that satisfaction which they demanded[1]. And here we must particularly observe, that those actions which are in modern law called *fiscales* and *inquisitoriæ*, scarcely existed among the Athenians and Romans of old[2]. With us, therefore, [172] criminal trials

[1] Demosth. adv. Androt. p. 601. Δεῖν δ' ᾤετο (ὁ Σόλων) μηδένα ἀποστερεῖσθαι τοῦ δίκης τυχεῖν, ὡς ἕκαστος δύναται. πῶς οὖν ἔσται τοῦτο; ἐὰν πολλὰς ὁδοὺς δῷ διὰ τῶν νόμων ἐπὶ τοὺς ἠδικηκότας. He proceeds to confirm this statement by instances of various actions for theft and impiety, and then adds περὶ τῶν ἄλλων ἁπάντων τὸν αὐτὸν τρόπον σχεδόν.

[2] I have said *scarcely existed*, because there are some examples of impeachments and examinations made by public authorities. Those, for instance, who had improperly assumed the right of voting, were examined by the Lexiarchs (see Book I. p. 74.); and such as had raised any seditious disturbance in the senate or assembly, were either fined by the Proedri or brought before the senate and people. See Book I. chap. x. Sometimes certain officers called ζητηταὶ were appointed for this purpose by the people, (see Andocid. de Myster. p. 3.) or the investigation of such cases was committed to the Areopagus, (see Dinarch. in Demosth. p. 90. 19. Steph. ib. 97. 26.) or that court of its own accord undertook it (p. 96. 28.). On the similar *inquisitiones* of the Romans the reader is referred to Bach, "Divus Trajanus, sive Commentarius de Legibus Trajani," p. 77. seq.

are of a nature entirely different from theirs. But at Athens a criminal was generally brought to trial by a private individual, who had the choice of instituting against him which action he pleased out of several—for in most causes there were several, by any of which the offender might be prosecuted. The next step was for the plaintiff to procure proofs and witnesses; and if he failed in establishing his cause by these means, and could not procure a fifth part of the votes, he was fined. It will, however, be found worth while to investigate a certain general law or system in distinguishing and defining the different kinds of offences and causes—a system which, though not expressly drawn up in words, yet appears to have been tacitly kept in view by the ancient legislators.

Generally speaking, then, those are considered public crimes, by which the state itself, and not a private individual, is injured: or those which, though they may immediately affect only the latter, are yet looked upon not according to the measure of the injury which they have done him, but according to the extent of their defiance of the laws in general, and infringement upon the rights and liberty of the whole body of the citizens. Now an offence may be committed against the state in many ways. Its religious rites may be outraged and profaned—the duties which are owed to it may be neglected—its privileges and advantages may be infringed—its constitution injured—its rights usurped—its administration illegally directed, or shared by persons who have been disqualified by its laws; its senate, assemblies, and courts may be corrupted; or, lastly, it may be disgraced by the bad morals or dishonourable practices of its citizens. [173] All these are evidently crimes committed directly against the state, and do not affect any single individual in particular. The following, then, and similar offences are designated as *public*: *Ἱεροσυλία, ἀσέβεια, λειποστράτιον, λειποτάξιον, ἀστρατεία, λειποναύτιον, ἀναυμάχιον, τὸ ῥίψαι τὴν ἀσπίδα, προδοσία, παραπρεσβεία, ἀγράφιον, ξενία, δωροξενία, παράνομα, δεκασμὸς, δῶρα, ἀργία, ἑταίρησις,*

with many others; for it is impossible to comprise every case which may occur under one definite name[3].

But of those crimes by which, properly speaking, a single individual, and not the state itself, is injured, many are considered public, because it often happens that an offence committed against one person may in some respects be regarded as affecting the whole state. Thus, for example, a person who violates another's wife, in fact commits an injury only against the husband: but since nothing is more essential to the interest of a state, than that the sanctity of marriage should be preserved inviolable, and the rights of families and the offspring of the citizens be maintained secure and uncontested—without which the whole will be weakened and thrown into perpetual confusion—for this reason, Solon at Athens, as well as Augustus at Rome, made adultery a public crime, and ordained that it should be tried by a public prosecution. Similarly, an injury, properly speaking, only affects the individual on whom it is inflicted, for which reason private suits are allowed to be instituted, of *αἰκία* and *κακηγορία*. But since the perpetrator of any violent outrage upon another, assault for instance, (such as is now called *realis injuria*) not only injures the person of the individual upon whom he commits it, but the liberty of the people and the majesty of the state in general (of which a portion is vested, in a free state, in the person of every citizen); it follows, that the crime which affects these latter privileges [174] may fairly be considered to affect also the whole body of the citizens, whose rights and dignity are on a par with those of the individual directly injured: and hence a public action for the offence (*ὕβεως γραφὴ*[4]) is provided by law. Every one will at once perceive that homicide, poisoning, wounds

[3] Vid. Jul. Pollux. viii. 40—54.

[4] On the actions for *ὕβρις*, *αἰκία*, and *κακηγορία*, see Heraldus, Obs. et Emend. c. 48. (in Eu. Ottonis Thesauro, T. R. tom. ii. p. 1378.) and Animadv. in Salmas. Observ. ad I. A. et R. lib. ii. c. 9—13. Compare iii. c. 3. §. 15. 16. 17.

inflicted with intent to kill, and arson, are, *à fortiori*, to be considered as public offences. Moreover, by theft not only private persons are injured, but the public safety is also endangered: whence there is likewise a public action against this offence. Again, whoever calumniously accuses another, or supports his suit by the testimony of false witnesses (*κλητῆρες*), or causes another's name to be enrolled among the public debtors, is guilty of an offence against the state as much as against his adversary, because he tends to defeat the real ends of justice, and throw into confusion the public accounts: and hence these crimes also are punished by a public prosecution. The same is the case with the offence of mal-treating a parent, an heiress (*ἐπίκληρος*), or a ward[5]: since it is right that the man who is guilty of some heavy misdemeanour against his parents should be publicly punished, as having violated the laws of natural affection and common humanity: and it is both a just and necessary provision, that those who are incapable of defending themselves against injury and fraud, as is the case with women and minors, should be protected by the public. To enumerate every similar case would require more time than we can now afford—the above will be sufficient to furnish examples. They are all, as we have stated, *public* causes, and are designated in Attic law by the following names: *Μοιχεία, ὕβρις, φόνος,* [175] *φάρμακα, τραῦμα ἐκ προνοίας, πυρκαϊά, κλοπή, συκοφαντία, ψευδοκλητεία, ψευδεγγραφή, κάκωσις γονέων, ἐπικλήρων, ὀρφανῶν*[6].

All public actions had this peculiarity in common, that they could be brought by any citizen whatever, except those who were *ἄτιμοι*; and not merely by those who were directly injured. They were, besides, all of them *penal*[7]: and if the accused was fined (which was the

[5] See Heraldus, Animadv. in Salmas. lib. iii. c. 14. 15. and lib. vii. c. 23.

[6] See Pollux, viii. 40—54.

[7] With the exception, perhaps, of that called *φάσις*, for this was sometimes an *actio persecutoria*, (see Pollux, viii. 48. and Böckh, Publ. Œcon. i. p. 376.

most usual way of punishment), the fine did not belong to the accuser, but to the state[8]. And thirdly, an accuser who failed in bringing his action, was fined in the sum of a thousand drachmæ generally; which amount was also imposed upon those who neglected to carry through an action which they had commenced; although it was not always exacted in this latter case[9].

Of all these public actions the most common in Attic law were γραφὴ, φάσις, and ἔνδειξις. Ἔνδειξις was properly an information against those persons who had got themselves appointed to some office, or had usurped some rights in the state[1], which they were disqualified by law or by sentence of court from holding. [176] For example, this action could be brought against those who, being debtors to the treasury, and consequently ἄτιμοι, had held magistracies, sat as judges in the courts, appealed to the people in assembly, or, in short, taken any share in the affairs of the state. It could be brought against exiles who had returned by stealth to their country: against those who persisted in frequenting the temples and public places[2] when they had been convicted of impiety (ἀσέβεια), and were consequently not allowed to enter them. There were other actions of ἔνδειξις against those who had dropped a public prosecution which they had commenced, either through a conscious-

seq.) but whether it was invariably so, I have great doubts. But this is not the place for determining the question.

[8] Here, however, we must again except φάσις. For those who gave information of fraudulent transactions in the exportation or importation of merchandise received half the assessment of the suit as a reward. Demosth. in Theocrin. p. 1325. To this must be referred what we learn from Demosthenes, in Macart. p. 1074. that if any person gave information of more olives having been dug up than was allowed by law, the offender had to pay him a fine of 100 drachmæ for each one, and the state also imposed upon him the same sum. And there were some other accusations to which a reward was attached. Demosth. in Neær. p. 1350. 1363.

[9] See Hudtwalcker on the Diætetæ, p. 159—166.

[1] Taylor, Lectt. Lysiac. cap. 6. p. 259.

[2] See Herald. Animadv. lib. iv. c. 9. p. 316. seqq.

ness of its injustice, or for a bribe[3]; against any of the Proedri who had refused without just cause to allow the people to vote in assembly[4], or had not submitted to their consideration the annual review of the laws; against the Prytanes who had neglected to convene the people for the purpose of taking that review[5]; and perhaps in several other cases. And, generally, [177] if any one gave information to the magistrates of having detected a person in the act of perpetrating a heavy crime, this information was sometimes called ἔνδειξις[6]. The statement of Julius Pollux: Ἔνδειξις· ὁμολογουμένου ἀδικήματος, οὐ κρίσεως ἀλλὰ τιμωρίας δεομένου[7], appears to be true, though not sufficiently explicit. For although, by the laws, that person only could bring ἔνδειξις, who conceived that he had indisputable evidence of the guilt of the individual against whom he brought it, so that no further examination, but merely sentence, was required; yet it frequently happened that the accused either totally

[3] Demosth. in Theocrin. p. 1323. φημὶ δὴ κατὰ ταύτην τὴν ἔνδειξιν ἔνοχον εἶναι Θεοκρίνην τῷ φήναντα Μικίωνα Χολλίδην μὴ ἐπεξελθεῖν, ἀλλ' ἀργύριον λαβόντα ἀποδόσθαι τὸ πρᾶγμα. The orator does not here mean to assert that Theocrines is convicted of having dropped his prosecution, and thereby become a debtor to the treasury and ἄτιμος; but he engages that he will cause him to be convicted by ἔνδειξις, and thus make him a public debtor. I have mentioned this to prevent a wrong view being taken of the passage. The words which precede, ὁ νόμος οὗτος—τοῖς προαιρουμένοις ἢ γράφεσθαι γραφὰς ἢ φαίνειν ἢ ἄλλο τι ποιεῖν τῶν ἐν τῷ νόμῳ τούτῳ γεγραμμένων προλέγει διαῤῥήδην ἐφ' οἷς ἕκαστόν ἐστι τούτων ποιητέον—seem to show that not only such as had dropped an action of φάσις, but such as had proved defaulters in carrying on a γραφὴ or other prosecution, were liable to this information against them. Demosthenes speaks only of φάσις by name in p. 1325. so that it is doubtful whether the same law extended to other public actions.

[4] See Book I. chap. xi.

[5] Demosth. adv. Timocrat. p. 707.

[6] Heraldus, ut sup. §. 2.

[7] VIII. 49. Heraldus indeed (ut sup. §. 12.) supposes that Pollux merely means to include those who had exiled themselves to avoid condemnation: for that no further doubt could be entertained of their guilt when they had, as it were, confessed it by voluntary retirement into exile. But I can hardly conceive that Pollux is speaking of one particular kind of ἔνδειξις only, and not of the whole class; nor that he intended to apply his definition to that one alone.

denied the charge, or contended that there was nothing illegal in the act. These informations were brought in writing before one of the Archons, either the Eponymus, the King, or a Thesmotheta, according to the nature of the cause[8]. The Archon then referred it to be decided by an ordinary trial; and if the accuser appeared to have brought a malicious charge, that is, if he failed in obtaining a fifth part of the votes, he was fined[9].

Φάσις was an information against those who had acted illegally in the importation or exportation of merchandise, or defrauded the state of any portion of its revenues accruing from the custom duties or the mines, or [178] been guilty of embezzlement, or appropriated without just title the property of the public to themselves; or injured, by malicious accusations, the state, the farmers of the taxes, or the merchants; or, lastly, against a guardian who had acted fraudulently or carelessly towards his ward[1]. The accuser challenged the offender by a summons called *πρόσκλησις*[2]; and presented his writ to the magistrate to whom the cognizance of the case belonged[3], with the

[8] Pollux, viii. 49, mentions *τὸν ἄρχοντα*, i. e. the Eponymus: Demosthenes, adv. Timocr. p. 707, the Thesmothetæ. Actions against those who had entered forbidden places after having been convicted of impiety, were unquestionably brought before the Βασιλεύς. See Andocid. de Myst. p. 15. 5.

[9] Heraldus, ut sup. §. 12. 13.

[1] See Pollux, viii. 47; Etymol. in v. *φάσις*; Lex. Rhet. in Bekker's Anecdot. i. 313 and 315; Boeckh, i. p. 376, seq. In Pollux I would punctuate the passage thus: *Φάσις δὲ ἦν τὸ φαίνειν τοὺς περὶ τὰ μέταλλα ἀδικοῦντας, ἢ περὶ τὸ ἐμπόριον κακουργοῦντας ἢ περὶ τὰ τέλη, ἢ τῶν δημοσίων τι νενοσφισμένους, ἢ συκοφαντοῦντας.* The latter word I do not conceive to include all sycophants in general, but only *τοὺς περὶ τὰ μέταλλα ἢ περὶ τὸ ἐμπόριον ἢ περὶ τὰ τέλη συκοφαντοῦντας.* On what Pollux adds: *κοινῶς δὲ φάσεις ἐκαλοῦντο πᾶσαι αἱ μηνύσεις τῶν λανθανόντων ἀδικημάτων*, see Sluiter, Lectt. Andocid. p. 185.

[2] Demosth. in Theocrin. p. 1324.

[3] For it is clear, from the passage of Demosthenes just quoted, that *all* these actions of *φάσις* were not brought before the Eponymus, as Matthiæ (de Judic. Athen. P. 2, p. 243) inferred from the words of Pollux, *ἐφαίνοντο δὲ πρὸς τὸν Ἄρχοντα.* For, in the above passage of Demosthenes the *φάσις* is stated to have been brought before the Harbour-masters, *τοὺς τοῦ ἐμπορίου ἐπιμελητάς.* Guardians, no doubt, were only brought before the Eponymus.

names of the witnesses (κλητῆρες, who bore testimony to the justice and legality of the action), and the assessment of the damage done by the accused[4]. The case was then brought up for trial. Upon the conviction of the defendant, the sum at which the suit was assessed was awarded to the party injured, with this restriction, that if it was for any damage done to the state, half the fine belonged to the person who had given information[5]. If the defendant was acquitted, a sixth part of the assessment of the suit, called ἐπωβελία, had to be paid by the accuser[6], if he failed in obtaining a fifth part of the votes.

[179] All other ordinary public actions were called γραφαὶ, a term which, in an extended signification, sometimes comprises also ἔνδειξις and φάσις, and a peculiar description of εἰσαγγελία, of which we shall speak more fully hereafter[7]. The very name γραφαὶ shows that the nature of these actions was such as to require that the accuser should give in a written indictment to the magistrate under whose cognizance the particular case came: for γραφὴ is properly nothing more than *a writ*. It was necessary in the first place that the date should be affixed[8], then the name of the magistrate before whom it was brought, then those of the accused and the accuser, then the heads of the indictment, the amount at which the suit was assessed (provided the offence was one of those for which no definite fine was prescribed by law, but not otherwise), and lastly, the name of the witnesses, κλητῆρες. When the indictment had been brought before the magistrate, a preliminary investigation (ἀνάκρισις, *grand jury*) was first held, after which, if a true bill was returned, the case was referred to the decision of the Heliæa, thus, as it were, sanctioned and attested by

[4] See Julius Pollux, viii. 47.

[5] Demosth. in Theocrin. p. 1325.

[6] Pollux, 48.

[7] Pollux viii. 40. 41. Compare Matthiæ, p. 230. n. 1.

[8] The most notable instance of such a writ is the γραφὴ of Æschines, in Demosth. de Coron. p. 243.

previous authority. It is unnecessary to enter more minutely into the remainder of the process at present.

Pollux enumerates[9] also *δοκιμασία*, *εὐθύνη*, *ἀπαγωγὴ*, *ἐφηγεῖσθαι* (*ἐφήγησις* Suidas and the Etymologist), *ἀνδρολήψιον*, *προβολὴ*, *εἰσαγγελία*: though all these belong to a different class. *Δοκιμασία* and *εὐθύνη* are not properly actions, but the names by which the actual trials of the magistrates or orators are designated[1]. *Ἀπαγωγὴ* and *ἐφήγησις* are terms applied to a person who either himself arrests an offender caught in the act, or by sending for the magistrates procures his imprisonment[2]. [180] *Ἀνδρολήψιον* is a species of reprisal between the inhabitants of different cities, for the sake of obtaining a satisfaction for slaughter which cannot be obtained in any other manner[3]. Of *προβολὴ* we shall shortly have occasion to speak: our present business is to enter minutely into the subject of *εἰσαγγελία*.

From the foregoing remarks upon the nature of public crimes, it will be easily perceived that innumerable offences may be committed, by which the state may sustain injury, and which therefore are properly accounted *public*. But it may occasionally happen that crimes are perpetrated which the precaution of a legislator could not foresee; or of such a singular description that a *general* law could hardly apply to them. *For laws cannot be framed to comprise every case which may occur.* Lastly, in the infinite variety of men, circumstances, and times, it may frequently happen that the same crimes sometimes appear less, according to the circumstances under which they are perpetrated, and sometimes greater, and deserving heavier punishment. Such crimes, therefore, differing from common cases, and not being comprised under any definite law, cannot be brought up for trial by the ordinary process, nor can cognizance be taken of them by any of the ancient statutes. For it is the province of the judge to apply to particular causes the general provisions of the

[9] Pollux viii. 40. 41. [1] Pollux viii. 44. 45. [2] Pollux viii. 49. 50.
[3] Vid. Hugo Grotius, de I. B. et P. III. 2. 3.

law: and as it is either impossible or exceedingly difficult to do this in the above cases, the only resource left is for those who have the chief management of affairs in the state to make some extraordinary provision for these particular [181] occasions—and this is the principle of *extraordinary trials*. At Athens, then, it was necessary in such cases for the accuser, if he thought the crime to come under the above description, to lay his information before the senate or the people, and allow them to determine in what manner cognizance should be taken of it. And the senate or the people either assumed to themselves the decision of the cause, or, more usually, referred it to the court of the Heliæa. They invariably, however, took it upon themselves to direct on what grounds the defendant should be put at the bar, and by what laws he should be judged and sentenced, as well as to appoint accusers to prosecute him in the name of the state, against which he had offended. The information against these extraordinary crimes was properly called εἰσαγγελία; although, as the original meaning of the word is as extended as that of the Latin *delatio*, we cannot be surprised at finding the terms εἰσαγγελία and εἰσαγγέλλειν occasionally applied by writers to informations of a different character[4]. But besides the one of which we are now speaking, there were, in particular, two other kinds of εἰσαγγελία of very frequent occurrence in Attic law. One was brought before the Archon Eponymus, and related to the ill-treatment of parents, heiresses, and wards; and the other before the senate, relating only to the unjust decisions of the Diætetæ, or Arbitrators[5]. The latter of these it is not our province to discuss: the former, of which we shall now speak, is thus defined by Harpocra-

[4] Thus, for instance, Lysias, in Agorat. p. 134. 20. Steph. applies the word εἰσαγγεῖλαι in the same sense as he had before, p. 134. 11 and 17. and elsewhere, used μηνῦσαι. Compare also in Eratosthen. p. 124. 32. 33. Andocid. de Myst. p. 6. 6 and 39. Herald. Animadv. in Salmas. III. 7. §. 4. p. 221.

[5] See Harpocrat. and Suid. in v. εἰσαγγελία. Herald. Animadv. in Salmas. III. c. 14. 15. Hudtwalcker de Diætet. 19. seqq.

tion: *Εἰσαγγελία δημοσίας τινὸς δίκης ὄνομά ἐστι·* [182] *τρία δέ ἐστιν εἴδη εἰσαγγελιῶν. ἡ μὲν γὰρ, ἐπὶ δημοσίοις ἀδικήμασι μεγίστοις, καὶ ἀναβολὴν μὴ ἐπιδεχομένοις, καὶ ἐφ' οἷς μήτε ἀρχὴ καθέστηκε, μήτε νόμοι κεῖνται τοῖς ἄρχουσι, καθ' οὓς εἰσάξουσιν, ἀλλὰ πρὸς τὴν βουλὴν ἢ τὸν δῆμον ἡ πρώτη κατάστασις ἔστω* (read *ἐστι*: Suidas has *γίνεται*) *καὶ ἐφ' οἷς τῷ μὲν φεύγοντι, ἐὰν ἁλῷ, μέγισται ζημίαι ἐπίκεινται, ὁ δὲ διώκων, ἐὰν μὴ ἕλῃ, οὐδὲν ζημιοῦται, πλὴν ἐὰν τὸ πέμπτον μέρος τῶν ψήφων μὴ μεταλάβῃ, τότε χιλίας ἐκτίνει. τὸ δὲ παλαιὸν καὶ οὗτοι μειζόνως ἐκολάζοντο.* With regard to his assertion, that there were no magistrates before whom such crimes could be properly brought, nor any fixed laws by which they could be tried; this must of course apply to the extraordinary crimes of which I have been speaking. Whether these were always of the most heinous description, and of so mischievous a tendency as to admit of no delay, we shall see hereafter. To the definition of Harpocration we must add that of Pollux, the purport of which is as follows: *ἡ δ' εἰσαγγελία τέτακται ἐπὶ τῶν ἀγράφων δημοσίων ἀδικημάτων, κατὰ τὸν νόμον τὸν εἰσαγγελτικόν*[6]. What follows, in explanation of the expression *τῶν ἀγράφων ἀδικημάτων*, is so corrupt as to be beyond the hope of emendation, and therefore I have thought it unnecessary to add it. Yet we can make out with sufficient certainty, that by *ἄγραφα ἀδικήματα* Pollux meant those *περὶ ὧν οὐκ εἰσὶ νόμοι.* And with him agree Hesychius, Suidas, and the unknown writer who has either copied Suidas or compiled from the same sources—the author of the Lexicon Rhetoricum lately given to the world by Bekker. Hesychius writes: *ἄγραφα ἀδικήματα, περὶ ὧν νόμος οὐ γέγραπται.* Suidas and the author of the above Lexicon explain [183] more at length:[7] *εἰσαγγελία κυρίως ἡ περὶ καινῶν*[8] *καὶ δημοσίων ἀδικη-*

[6] Pollux, viii. 51.

[7] Hesych. in v. *Ἄγραφα.* Suid. in v. *Εἰσαγγελία.* Lex. Rhet. in Bekker's Anecdot. I. p. 244.

[8] *Καινῶν*, the reading now discovered in the Lexicon Rhetoricum, is un-

μάτων εἰσαγομένη δίκη ὑπὸ τῶν Πρυτανέων, περὶ ὧν διαρρήδην μὲν οὐδὲν λέγουσιν οἱ νόμοι, συγχωροῦσι δὲ κρίσεις γενέσθαι. καὶ τοῦτό ἐστιν οἷον τὸ ἐν ταῖς τῶν Σοφιστῶν διατριβαῖς μελετώμενον, τὸ τῶν ἀγράφων ἀδικημάτων. These two writers, therefore, call those crimes καινὰ, *new*, or *unusual*, which we have called *extraordinary:* and they inform us that these were called ἄγραφα in the schools of the sophists and rhetoricians, who used to practise their disciples in the prosecutions and defences of such crimes, which furnished an excellent scope for their disputatious abilities. The Latin rhetoricians, too, in a manner precisely similar, invented the name of *inscripta maleficia*[9] for offences corresponding to the ἄγραφα ἀδικήματα. And both the Greek and Latin expressions are applicable, by their very nature, to private as well as public offences, so long as they are of such a description as cannot be positively specified [184] by the words of any law. But all public crimes which are ἄγραφα come under the action of εἰσαγγελία; though it does not follow that all actions of εἰσαγγελία are also for crimes which are ἄγραφα. It is, I believe, most certain that the phrase ἄγραφα ἀδικήματα, which is found in none of the ancient writers, is a mere fabrication of the sophists and rhetoricians, and as completely unknown

questionably better than that in the MSS. of Suidas, κοινῶν, for which καινῶν should apparently be restored.

[9] "Apud declamatores actio quædam proponitur, e quâ eorum quædam oriuntur causæ, inscripti maleficii: ut apud Senecam. lib. v. Declam. 1. *Inscripti maleficii sit actio.* Ea, ut opinor, maleficii erat legibus nominatim comprehensi neque cauti, cujus tamen actio dabatur. Quæ quidem moribus Græcorum videtur comparata fuisse, non Romanorum, apud quos Scholasticum hoc et declamatorium erat, non in republica usitatum, etc." Turneb. Adversar. lib. x. cap. 6. "Pleraque alia aliter in scholâ Rhetorum, aliter in foro nuncupantur. Inscripti maleficii actio in scholâ, stellionatus in foro, etc." Cujac. Observatt. lib. ix. cap. 13. This is the source whence Salmasius derived his ideas about *Stellionatus*, which Heraldus has treated so roughly. Cujacius is right in comparing the Scholastic action *inscripti maleficii* with the forensic one of *Stellionatus*, because he merely had in view the Latin Rhetoricians, who use this expression of private, and not, like the Greeks, of public offences.

in Attic law as the corresponding expression *inscripta maleficia* was in the Roman Forum. Lycurgus, in his oration against Leocrates, designates these extraordinary crimes by a circumlocution[1]: *Ὅσα μὲν γὰρ τῶν ἀδικημάτων νόμος τις διώρικε, ῥᾴδιον τούτῳ κανόνι χρωμένους, κολάζειν τοὺς παρανομοῦντας· ὅσα δὲ μὴ σφόδρα περιείληφεν ἑνὶ ὀνόματι προσαγορεύσας, μείζω δὲ τούτων τις ἠδίκηκεν, ἅπασι δὲ ὁμοίως ἔνοχός ἐστιν, ἀναγκαῖον τὴν ὑμετέραν κρίσιν καταλείπεσθαι παραδεῖγμα τοῖς ἐπιγιγνομένοις.* What can we call those crimes which the law does not comprise under any single term, or which are greater than any which it does so comprise, but extraordinary and *unwritten* (*ἄγραφα*)? And as the orator contends that the crimes of which he is accusing Leochares are of this nature, and Leochares is prosecuted by *εἰσαγγελία*, we may call such a case *εἰσαγγελία ἀγράφων ἀδικημάτων.*

Desiderius Heraldus—a man of surpassing learning and talent, and immeasurably the most profound and accurate of all the writers on Attic law—in his endeavours to refute the false opinion of Salmasius, that *εἰσαγγελία* corresponded with the Latin *stellionatus*, has proposed a widely different explanation of *ἄγραφα ἀδικήματα*; and so determined is he to prove it, that he unhesitatingly despises and rejects all the authority of the Grammarians, [185] which had been adduced by Salmasius in support of his own opinion, and certainly not without some plausibility, though they are of no great force[2]. I confess, I have my apprehensions that his zeal in proving Salmasius in the wrong has led him a little too far. He contends, that *ἄγραφα ἀδικήματα* do not mean these undetermined and extraordinary crimes; but those which, though particularly specified in and provided against by the law, are still called *ἄγραφα*, not from the deficiency of any such provision, but because, having a penalty attached to them

[1] Lycurg. in Leocr. p. 149. Steph.

[2] Herald. Animadv. in Salmas. lib. iii. c. 7. §. 6. p. 222.

defined by law, and the accuser having no power to fix the assessment, the action called *γραφὴ* could not be brought against them, since *that* could not exist without at the same time determining the penalty. Now first, there might be some grounds for this statement, if it were certain that that term was actually used in Attic law, and by Attic lawyers, and was not the mere invention of the later Sophists and Rhetoricians. But if the former be not the case (and who shall assert that it is?), we have no reason to reject the information of the Grammarians upon the definitions of their own relations (as it were), the Rhetoricians. I have no doubt these latter were unacquainted with any other *ἄγραφα ἀδικήματα* than those of which the Grammarians speak. In the next place, even though we should admit that the author of the term meant to designate by it the very thing which Heraldus supposes, still I should insist that he is in error. It is not true that *γραφὴ* never had a place in those crimes which were laid before the senate or the people by *εἰσαγγελία*; and the distinction made by Heraldus between the two actions is entirely groundless. What! the crime of [186] treason (*προδοσία*) came under the head of *εἰσαγγελία*, as some of the ancients testify[3], and Heraldus himself has most elaborately shown[4]. Yet Pollux speaks also of *γραφὴ προδοσίας*[5]. We know from Isocrates[6], that sycophancy could be prosecuted both by *εἰσαγγελία* before the senate, and *γραφὴ* before the Thesmothetæ. Theophrastus, quoted by Pollux, states that any attempt to subvert or weaken the democracy was punished by *εἰσαγγελία*; but Demosthenes mentions[7]

[3] Demosth. adv. Leptin. p. 481. Compare Pollux, viii. 52.

[4] Herald. ut sup. cap. 10—12.

[5] viii. 40.

[6] De Permut. p. 820. ed. Wolf. *κατὰ δὲ τούτων (τῶν συκοφαντῶν) γραφὰς μὲν πρὸς τοὺς θεσμοθέτας, εἰσαγγελίας δ' εἰς τὴν βουλὴν, προβολὰς δ' ἐν τῷ δήμῳ (οἱ πρόγονοι ἐποιήσαντο).*

[7] Pollux, viii. 52. Compare Dinarchus, in Dem. p. 102. 14. Demosth. Or. 2. in Stephan. p. 1137. *Νόμος. Ἐάν τις συνίστηται ἢ συνδεκάζῃ τὴν Ἡλιαίαν, ἢ τῶν δικαστηρίων τι τῶν Ἀθήνησιν, ἢ τὴν βουλὴν, ἐπὶ δωροδοκίᾳ χρήματα*

γραφὴ in the same case. There is no doubt that ξενίας γραφὴ existed: but Dionysius of Halicarnassus[8] speaks also of εἰσαγγελία ξενίας. Again;—the usual action against murder was γραφή; but we read in Demosthenes[9] in this case too of εἰσαγγελία being brought before the senate. These examples, to which more might be added, and of which we shall speak hereafter in a more fit place, prove, I think, with sufficient certainty, that the same kinds of crime could be brought to trial at one time by εἰσαγγελία, at another by an ordinary γραφή. And in fact, as I have already remarked, all public crimes whatsoever, [187] although, viewed with reference simply to themselves, they might belong to that class of misdemeanours which could be punished by certain fixed laws, by ordinary proceedings and an ordinary trial, might still be accounted extraordinary, and referred by an extraordinary process, εἰσαγγελία, to the senate or the people, whenever the peculiar circumstances of the case might seem to require it. We will now say a few words upon that distinction between γραφαὶ and εἰσαγγελίαι, which we have just asserted to be false. The opinion of Heraldus is, that in all γραφαὶ the penalty had to be determined by the accuser; and that these actions could not be instituted in any case but those in which the law had not previously appointed a certain and definite penalty. In εἰσαγγελίαι, however, Heraldus supposes that the penalty had not to be estimated for each particular occasion, because it had been predetermined by a general provision of the law; and that in such cases alone εἰσαγγελία could be instituted. But there was indisputably a ξενίας γραφὴ, for which the law assigned a fixed penalty, slavery[1]. If an alien married a woman, who was a citizen

διδοὺς ἢ δεχόμενος, ἢ ἑταιρίαν συνίστῃ ἐπὶ καταλύσει τοῦ δήμου—τούτων εἶναι τὰς γραφὰς πρὸς τοὺς Θεσμοθέτας.

[8] Dionysius in Dinarch. p. 116. 31. ed. Sylburg. enumerates amongst the δημόσιοι λόγοι γνήσιοι of Dinarchus, an oration κατὰ Πεισικλέους, εἰσαγγελίαν ξενίας.

[9] Demosth. in Mid. p. 554.

[1] Ulpian. ad Demosth. adv. Timocrat. p. 467.

of Attica, by any fraudulent means, he was liable to be indicted by a γραφὴ and carried before the Thesmothetæ, and the law enjoined that he should be sold as a slave, and his property confiscated, of which a third part was awarded to the accuser[2]. And if a foreign woman married with an Attic citizen, she was accused and punished in the same way. Again, if a citizen gave a foreign woman in marriage to another citizen, under pretence that she was a relation of his, he was accused by a γραφὴ before the Thesmothetæ, and the fine prescribed by law was ἀτιμία and the confiscation of his property[3]. The action for ψευδεγγραφὴ and [188] βούλευσις was by a γραφή[4]; and the prescribed punishment, that the person convicted of having wrongly procured another's name to be registered as a debtor to the state, should himself be registered instead[5]. The action for ἀπροστάσιον was by a γραφή: the punishment which the law appointed, slavery[6]. The same was the case with ἀστρατεία, λειποτάξιον, δειλία: and the punishment in like manner ἀτιμία[7]. These instances are, I hope, sufficient to prove, that the suit was not to be assessed by the accuser in every case of γραφή. On the other hand, the remarks I have previously made on the nature of extraordinary crimes, clearly show that in those offences which were punished by εἰσαγγελία, the penalty was not always predetermined by the laws. Now these crimes were either in reality *unwritten* (ἄγραφα), and not specified in any law; or not absolutely *unwritten*, but yet *extraordinary*, that is, of too heinous a character to be prosecuted and punished by the ordinary ways of proceeding. The penalty therefore had to be determined either by the person who brought the action, the senate

[2] Demosth. in Neær. p. 1350.

[3] Demosth. in Neær. p. 1363.

[4] Pollux, viii. 40. 43. and the commentators.

[5] Demosth. adv. Aristogit. p. 792. and Libanius, in Argum. p. 769.

[6] Pollux, viii. 35. Demosthen. p. 790. where ἀποστασίου is read in the editions. Valckenär however (ad Ammon. p. 19.) has suggested the right reading ἀπροστασίου.

[7] Æschin. adv. Ctesiphont. p. 566.

or people, or the court. But of this we shall speak hereafter.

Now, to revert to our Grammarians, I think their meaning sufficiently intelligible, when they state that εἰσαγγελία was applicable to τὰ ἄγραφα ἀδικήματα, and it is easy to see how far their definition is a true one. In short, εἰσαγγελία was applicable to all public crimes, not comprised under any law; but then they were not the *only* crimes in which this was the case. Indeed every one must at once perceive, that the number of [189] the crimes not thus comprised by and specified in any law, or those to which, if specified, it is difficult to apply the law, must be very small: but that those in which, on account of the diversity of the offenders, circumstances, and times, the ordinary proceedings appear to be unsuited and inadequate to the case, must be of much more frequent occurrence. And this inadequacy was urged far more often than necessary, by powerful and factious men, who, in bringing crimes even of a lighter nature before the senate or people, were anxious either to secure to themselves more favour and influence, or to cause more risk and excite greater odium against their adversaries. Generally, such accusations were eagerly received by men of ignorant minds and suspicious dispositions, who were in constant dread, even from the most trifling causes, of some infringement upon their own sacred dignity, or some attempt to dissolve their loved democracy; or who were desirous to increase the funds of the treasury by the confiscation of as much property as possible[8]. Julius Pollux gives a general account[9], from Theophrastus, of the chief causes in which εἰσαγγελία was instituted. Ἐγίγνοντο δὲ καὶ εἰσαγγελίαι κατὰ τῶν καταλυόντων τὸν δῆμον ῥητόρων, ἢ μὴ τὰ ἄριστα τῷ δήμῳ λεγόντων, ἢ πρὸς τοὺς πολεμίους ἄνευ τοῦ πεμφθῆναι

[8] Aristophanes attacks this propensity of his fellow-citizens with the most lively satire, Vesp. v. 486—505. Compare Lysias, adv. Nicomach. p. 185. 21.

[9] VIII. 52.

ἀπελθόντων, ἢ προδόντων φρούριον ἢ στρατιὰν ἢ ναῦς, ὡς Θεόφραστος ἐν τῷ περὶ Νόμων[1].

[190] To illustrate more fully the foregoing observations, it will perhaps be found serviceable to adduce a few of the more celebrated instances of *εἰσαγγελίαι* from the ancient writers themselves[2]. First, then, we will mention the case of Alcibiades, who was accused by *εἰσαγγελία* before the senate, of having profaned the mysteries. The circumstance is related by Isocrates in his oration *de Bigis*, which he wrote for the son of Alcibiades: *Εἰδότες δὲ (οἱ τοῦ πατρὸς ἐχθροὶ) τὴν πόλιν τῶν μὲν περὶ τοὺς θεοὺς μάλιστ' ἂν ὀργισθεῖσαν, εἴ τις εἰς τὰ μυστήρια φαίνοιτο ἐξαμαρτάνων, τῶν δ' ἄλλων, εἴ τις τολμῴη τὸν δῆμον καταλύειν, ἀμφοτέρας ταύτας συνθέντες τὰς αἰτίας, εἰσήγγελλον εἰς τὴν βουλὴν, λέγοντες ὡς ὁ πατὴρ συνάγει μὲν τὴν ἑταιρίαν ἐπὶ νεωτέροις πράγμασιν, οὗτοι δὲ ἐν τῇ Πολυτίωνος οἰκίᾳ συνδειπνοῦντες τὰ μυστήρια ποιήσειεν*[3]. There were, therefore, two crimes of which Alcibiades was accused: one, by which he was charged with a conspiracy to put an end to the democracy; and for which an ordinary accusation, *γραφὴ*,

[1] Heraldus has discussed this passage of Pollux at length, lib. iii. cap. 9.—13. The same writer has also well explained the meaning of the expression *καταλύειν τὸν δῆμον*, cap. 9. §. 3. "*Κατάλυσις τῆς πολιτείας* est crimen majestatis. Si *πολιτεία* illa democratia est, quodcunque fit ad eam dissolvendam aut minuendam, dicitur *τοῦ δήμου κατάλυσις*, et crimen est majestatis." As to his proposal (cap. 13. §. 1.) to read *ἢ τῶν τοῦ πολέμου—ἀπελθ.* (he should at least have written *ἐκ τοῦ πολ.*), instead of the reading in the more ancient editions *ἢ πρὸς τοὺς πολέμους ἀ. τ. π. ἀπελθόντων*, we need hardly observe, how much better and safer is the emendation proposed by Jungermann and Kuhn, and confirmed by MSS., *τοὺς πολεμίους*. That this was a capital offence Demosthenes also intimates, de Fals. leg. p. 380.

[2] A great part of these instances has been collected by that excellent scholar and valuable writer, A. Matthiæ, in his treatise de Judic. Athen. P. 2. p. 230—238.—a work which is throughout replete with important information on the subject of the Attic law, and in that part of it which is devoted to the examination of *εἰσαγγελία*, peculiarly useful. He might, however, have added to the number of the examples, and perhaps been a little more accurate in explaining those which he has adduced.

[3] Isocrat. de Bigis, p. 828.

was laid before the Thesmothetæ, as we have already shewn from Demosthenes[4]; [191] and another, by which he was indicted of having profaned the mysteries. This latter crime was properly *ἀσέβεια*, and it is designated by that name in the prosecution by *εἰσαγγελία*, which Thessalus entered against Alcibiades, and of which a portion is preserved by Plutarch[5]. *Ἀσέβεια* was punished by a *γραφὴ* before the King Archon[6]. In this case, however, of Alcibiades, as two crimes were combined, the offender a man of the greatest influence and highest connections in the state, and the times most alarming and precarious, it was deemed proper to dispense with the usual proceedings against each of the two offences, and to bring an action at once by *εἰσαγγελία* before the senate. The cause was referred by that body to the decision of the court, and Alcibiades not appearing at the trial, he was capitally condemned.

The next instance which we shall quote is the case of the orator Antiphon, Archeptolemus, and Onomacles. We are informed by the Pseudo-Plutarch[7], that these were indicted by *εἰσαγγελία* before the senate, for having, without any public commission or authority, and against the interests of the state, sailed from the camp in one of the enemy's ships, and going on foot through Decelea, then occupied by the enemy, departed to Sparta in the character of ambassadors[8]. The senate received the indictment, and ordered them to be arrested and brought up for trial, where they were to be arraigned for treason, (*προδοσία*) by accusers publicly nominated for that pur-

[4] Demosth. Or. 2. in Stephan. p. 1137.

[5] Life of Alcibiades, cap. xxii: compare also chap. 19. Pseudo-Plutarch. Vitt. Dec. Orat. in Andocid. tom. ii. p. 834.

[6] Lysias in Andocid. p. 104, 13. Compare Demosth. adv. Timocrat. p. 702. adv. Androt. p. 601. Pollux, viii. 40. 90.

[7] Vitt. Dec. Orat. in Antiphont. p. 833. E. See also Heraldus, chap. x. xi.

[8] This *εἰσαγγελία*, therefore, was one of that description which Pollux enumerates, viii. 52. *κατὰ τῶν πρὸς τοὺς πολεμίους ἄνευ τοῦ πεμφθῆναι ἀπελθόντων.*

pose, and by any other individual who chose to interfere. They were ultimately capitally condemned, and deprived of the rites of sepulture; their property was confiscated, their houses destroyed, [192] and all their posterity pronounced ἄτιμοι. The crime is designated as treason in the decree of the senate; and this was properly prosecuted by a γραφή[9]. But in this particular case they were indicted by εἰσαγγελία, because they were men of great influence and authority, and had they accomplished their design they would probably have greatly endangered the whole state.

The case of Leocrates is also similar. This man had fled from Athens after the battle of Chæronæa to Rhodes, and thence subsequently to Megara. Here he was received as the client, and taken under the protection, of one of the inhabitants, and commenced business as corn-factor, in which capacity he carried on his trade with Thessaly and Corinth. Upon his return to Athens after a lapse of six years, Lycurgus accused him of treason by εἰσαγγελία[1]. And yet neither of the offences which Leocrates had committed could of itself properly come under that head. His having declined to serve in the army, and deserted his country when all were summoned to arms, was ἀστρατεία, the punishment of which was inflicted through the medium of a γραφή[2]. His having imported corn elsewhere than to Athens, which Attic citizens were forbidden to do by the laws, would have been in usual cases punished by the ordinary indictment called φάσις[3]. And Leocrates brought in this plea, as a ground of exception, viz. that it was actually impossible that he should have been guilty of the crime of treason, because he had no power in or control over any of those things in which alone treason can take place[4], as the docks, the gates,

[9] Pollux, viii. 40.

[1] Lycurg. in Leocrat. p. 149. 39.—151. 21. Steph.

[2] Pollux, viii. 40. Compare Lysias, in Alcibiad. p. 144. 20, and see Markland ibid. p. 554 seq. ed. Reiske.

[3] See Libanius, in argum. orat. in Theocrin. p. 321. Boeckh, i. p. 93.

[4] Lycurg. in Leocrat. p. 155. 23.

the camp. [193] This objection was undoubtedly true, with reference to the proper and usual acceptation of the term προδοσία. Lycurgus, however, asserts in answer "That Leocrates was not guilty of betraying to the enemy any one particular part, but the whole of the state, as far as it lay in his power. That when the commonwealth had just suffered a heavy disaster, when a victorious army threatened daily to surround and lay siege to the city, when men of every age and every rank were earnestly exhorted and implored to take up arms; in this emergency Leocrates, as if destitute of all patriotic feeling, all regard for his fellow citizens, and all piety towards the gods of his country and his household, had fled in secrecy and in disobedience to the decree of the people, and fled moreover with the apparent intention of never returning again[5]. That the people had already decided in what light such conduct ought to be viewed, for by the case of one Autolycus, who was accused of a similar though less heinous offence, they had established a precedent that all who deserted their country in any emergency should be guilty of treason[6]. But Leocrates was not contented with this single crime: he had thought fit to absent himself for the space of five years, and live, to the disgrace of his country and himself, as client to some Megarian, under whose patronage he added to the former the commission of another crime against his country in importing corn to Corinth and not to Athens[7]. His offences therefore were so manifold and atrocious, so far surpassing all ordinary cases, that no provision was made for punishing them by the ancient laws of the land. There never yet had been an offender to such an extent, and the legislators could not have foreseen the probability of such an one ever existing[8]." I have entered into this case with some minuteness, [194] because it appears to me to give a clearer view than any other of the true nature of extraordinary crimes. In describing the rest I shall be more brief.

[5] Lycurg. in Leocrat. p. 152. 27. [6] Ibid. p. 154. 31.
[7] Ibid. p. 151. 18. [8] Ibid. p. 148. 41.

A general could also be impeached for treason by εἰσαγγελία, if he had shown himself by his conduct to be deficient in bravery or promptitude, or had proved treacherous or inimical to the state. Thus, for example, Miltiades was accused before the people of treason, and fined fifty talents[9], because, when he might have taken the island of Paros, he had suffered himself to be bribed by the king to desist from his attempt. And so exasperated were the people at this behaviour, that had not the Chairman of the assembly peremptorily refused to allow it, they would have had him thrown into the barathrum[1]. In the same manner Timotheus, the son of Conon, being accused of having desisted from an expedition in which he was engaged, was upon conviction deprived of his command, and Antimachus his treasurer (ταμίας) capitally condemned[2]. And to this subject must be referred the remark of Demosthenes[3] about Chabrias: μίαν μὲν πόλιν εἰ ἀπώλεσεν ἢ ναῦς δέκα μόνας, περὶ προδοσίας ἂν αὐτὸν εἰσήγγελον οὗτοι. But there were other misdemeanours for which generals were liable to be indicted in the same manner; for instance, the oppression or annoyance of the allies, or the plunder of their merchant-ships[4]; an offence of which, in the time of the orators, [195] the commanders of mercenary troops were frequently guilty: for as they received no supplies from the government, and yet found it impossible to keep their men in duty without regular pay, they were compelled by the necessity of the case to have recourse to plunder and rapine. Lastly, I imagine

[9] Nepos, Miltiad. cap. 7. Herod. vi. 136.

[1] Plato, Gorg. p. 516. D. Μιλτιάδην δὲ τὸν ἐν Μαραθῶνι εἰς τὸ βάραθρον ἐμβαλεῖν ἐψηφίσαντο, καὶ εἰ μὴ διὰ τὸν πρύτανιν, ἐνέπεσεν ἄν. Hence it is certain that the cause was tried by the people in assembly; and it may therefore be inferred that it was by εἰσαγγελία.

[2] Demosth. in Timoth. p. 1187. Compare Nepos, vit. Timoth. cap. 4.

[3] Demosth. in Leptin. p. 481.

[4] Demosth. de Cherson. p. 96-7. Similar to this was the case of Ergocles, who is accused in the oration of Lysias of oppression of the allies, embezzlement, and treason. (Lys. p. 179—181.) That this cause was tried before the people we know from this oration, p. 180. 14, and from the following one, in Philocrat. p. 182. 27.

that the procedure by which the ten generals were brought to trial for not taking up their dead after the battle of Arginusæ, was εἰσαγγελία[5].

Moreover, ambassadors who had been guilty in any way of malversation in an embassy—who, for instance, had undertaken it without having been deputed by public authority, or had neglected or betrayed the interests of the state for a bribe or some other inducement, or, in announcing the result of it, had wilfully and falsely misled the people, all these could be impeached by εἰσαγγελία, as we know from Æschines, amongst other authors. That orator thus addresses Demosthenes: πρεσβεύσαντος ἐμοῦ τὴν τρίτην ἤδη πρεσβείαν ἐπὶ τὸ κοινὸν τῶν Ἀμφικτυόνων, τολμᾷς με λέγειν ὡς οὐ χειροτονηθεὶς ᾠχόμην, ἐχθρὸς δ' ὢν οὔπω καὶ τήμερον τεθέληκάς με εἰσαγγεῖλαι παραπρεσβεύσαντα[6]. Demosthenes also, speaking of the embassy to Philip having been improperly conducted and the result falsely reported by Æschines, assures the latter εἴ γέ τι τῶν προσηκόντων ἐγίνετο, ἐν εἰσαγγελίᾳ πάλαι ἂν ἦν[7]. Philocrates was charged by Hyperides with the same offence by εἰσαγγελία, and banished in consequence[8]. Timagoras was likewise accused by his colleague, Leon, of having been bribed on an embassy by the king of the Persians, [196] and was put to death[9]. For all crimes of a similar nature there was also an ordinary action, γραφὴ παραπρεσβείας[1], that the accuser might in every case be

[5] Xenoph. Hellen. i. 7. 3. seqq. But both the accusation and trial of these unfortunate men was conducted in an irregular and tumultuous manner by the incensed and ungovernable rabble.

[6] Æschin. de Fals. leg. p. 306.

[7] Demosth. de Fals. leg. p. 374.

[8] Æschin. adv. Ctesiphont. p. 470. and 473. Compare Demosth. de Fals. leg. p. 376.

[9] Demosth. p. 350. 383. 400.

[1] The ordinary examination or trial of ambassadors was called by a general name εὐθύνη or εὔθυνα, and was held by the Heliasts or Euthuni; and whoever brought up an ambassador for trial before either of these, was said to impeach him of malversation in his embassy, παραπρεσβείας γράψασθαι. See Julius Pollux, viii, 45, 46. Demosthenes, de Fals. leg. p. 374, 363. Harpocrat. in v. εὔθυναι.

at liberty to choose between the two, and adopt that which appeared most suited to the nature and extent of the crime, or to his own convenience or that of the state.

If an orator was thought to have given the people pernicious or treacherous advice, or to have thereby endangered the commonwealth—a species of offence in its very nature greatly varied, and very difficult to comprise under any ordinary action—his conduct might be impeached by εἰσαγγελία, as we learn from Pollux[2]. It is to this kind of offence that we must refer a law mentioned by Demosthenes and Isocrates, to the effect that all who fraudulently and perfidiously misled the people, by false promises or pretences, should be liable to an accusation by εἰσαγγελία[3].

There yet remain a few cases of εἰσαγγελίαι which I am unwilling to omit, but shall content myself with recounting briefly. The first is in Demosthenes, in the oration against Euergus[4]. The plaintiff for whom this oration was written, there deposes that he, being a trierarch and superintendant of his Symmoria (ἐπιμελητὴς τῆς συμμορίας), went by order of the senate to demand of Theophemus, who had before been a trierarch, [197] certain ships' furniture (σκεύη) which were owed by him to the state. That upon the refusal of Theophemus to deliver them up, he proceeded to take pledges for them from his house; in the execution of which duty he was violently assaulted and beaten by the defendant. That upon this he appealed to the senate, and stated his case; that they were highly indignant at the treatment he had received, and, considering that not only the individual assaulted, but the state in general and the laws had been outraged, ordered the case to be brought before them, for cognizance, by εἰσαγγελία. This being done in conformity with their injunction, the defendant was not only condemned to give

[2] VIII. 52.

[3] Demosth. in Timoth. p. 1204. adv. Leptin. p. 487. 498. Petit, Leg. Att. p. 527. seqq.

[4] Demosth. in Euerg. p. 1149—52.

up the ships' furniture, but additionally fined to the amount of twenty-five drachmæ. That this was an extraordinary offence will be perceived at once.

The next instance is in Lysias[5]. It was usual at Athens for the poor, who were unable from their infirmity to gain a livelihood by themselves, to receive a certain allowance from the treasury[6]. One individual was accused of having unfairly obtained this stipend, when he was not only well able to work, but also followed a trade which was competent for his maintenance. He was accused on these grounds by εἰσαγγελία before the senate[7], if any faith is to be put in the received title to the oration, which Lysias composed for this helpless client of his—πρὸς τὴν εἰσαγγελίαν περὶ τοῦ μὴ διδόσθαι τῷ ἀδυνάτῳ ἀργύριον: for in the oration itself there is no mention of εἰσαγγελία[8].

[198] The third case is also taken from Lysias[9]. There was a law at Athens that no one should be allowed to buy in more than fifty phormi of corn. (The phormus is a measure of uncertain capacity.) Some dealers in corn had transgressed this law, on which grounds they were accused before the senate, and sent by that court to be tried in the Heliæa. This appears also to have been a case of εἰσαγγελία[1].

Again, in the oration of Lysias against Theomnestus[2], an action of εἰσαγγελία is stated to have been brought against that individual for persisting to speak in the assembly after he had been punished with infamy (ἀτιμία) for throwing away his shield. Now the proper action for this offence was by ἔνδειξις; so that εἰσαγγελία must here have been an extraordinary proceeding, either on

[5] Orat. xxiv. p. 168.

[6] See Boeckh, Publ. Œcon. i. p. 260.

[7] See Heraldus, Animadv. iii. 8. §. 2.

[8] Boeckh (ut sup. p. 261. not. 404.) supposes that this oration was only an exercise (μελέτη), and not a real ἀγών—but I confess I do not quite comprehend the force of his argument.

[9] Lysias, κατὰ τῶν σιτοπωλ. p. 164.

[1] See Matthiæ, de Judic. Athen. P. 2. p. 232. not. 7.

[2] P. 116. 17.

account of the character and condition of Theomnestus, or from some other circumstance connected with the case.

There was a certain law, *νόμος εἰσαγγελτικός*, existing on the subject of these *εἰσαγγελίαι*, which is mentioned by Demosthenes and Pollux. The object of it was, I imagine, to define first to what kinds of offences *εἰσαγγελία* was applicable, and secondly what were the duties and privileges of the accuser in bringing, and what those of the senate and people in taking cognizance of it[3]. And now that we have given [199] as accurate a dissertation as lay in our power upon the different kinds of offences, we will proceed to the discussion of the next point.

All *εἰσαγγελίαι* were laid not, as was the case with *γραφαὶ*, *φάσεις*, and *ἐνδείξεις*, before a particular Archon, but before either the senate or the people: *πρὸς τὴν βουλὴν* (in the words of Harpocration) *ἢ πρὸς τὸν δῆμον ἡ πρώτη κατάστασίς ἐστιν*. By them the case was first reviewed and considered, after which they decided in what manner it should be further proceeded with. The duty of the senate in such cases may be learnt with sufficient accuracy from the oration of Demosthenes against Euergus, where the plaintiff, after stating that he had complained to the senate of the injury he had received from Theophemus, thus proceeds:—"Upon this "the senate expressed the greatest indignation at what "I had suffered, and considering that not I alone, but "its own authority, as well as that of the people and of "the laws, had been outraged, ordered me to institute an "*εἰσαγγελία*, and the Prytanes to appoint his trial to be

[3] Pollux. viii. 51. Ἡ δ' εἰσαγγελία τέτακται ἐπὶ τῶν ἀγράφων δημοσίων ἀδικημάτων, κατὰ τὸν νόμον τὸν εἰσαγγελτικόν. Demosth. de Chersones. p. 96. extr. εἰ γὰρ δεινὰ ποιεῖ Διοπείθης, καὶ κατάγει τὰ πλοῖα, μικρὸν, ὦ ἄνδρες Ἀθηναῖοι, μικρὸν πινάκιον ταῦτα πάντα κωλῦσαι δύναιτ' ἄν. καὶ λέγουσιν οἱ νόμοι ταῦτα, τοὺς ἀδικοῦντας εἰσαγγέλλειν. The orator is here speaking of misdemeanours committed by generals,—the oppression of the allies and the detention of their ships. These offences therefore came under the head of those for which the law appointed the action of *εἰσαγγελία*.—There is another passage adv. Timocrat. p. 720, which I will adduce hereafter.

" held two days afterwards, as having offended against " the state, and proved an obstacle to the intended ex- " pedition by sea. The charges against him were, for " refusing to deliver the required ships' furniture; for " recovering by force the pledges I had taken from him; " and for assaulting and maltreating me when in the " execution of my public duty. When therefore his trial " came on before the senate, in accordance with the " εἰσαγγελία which I had brought against him, and per- " mission to speak had been given to both parties, the " senators, by secret votes, found a true bill against " him. And when they were holding a consultation " whether they should give him over to the judges, or " fine him in the sum of five hundred drachmæ, which " was the full legal amount; upon the earnest entreaty of " this party, and their sending certain persons to inter- " cede with me, as well as producing on the spot a list " (διάγραμμα) of the articles which he had refused to " deliver, and engaging to accept any arbiter whom I " might nominate to decide upon the injury done to me " by him, I at length yielded to their entreaties, and suf- " fered Theophemus to be fined to the additional amount " of only twenty-five drachmæ." [200] Now from this narrative we derive the following information. First, that a certain formula was necessary in drawing up an εἰσαγγελία, and also, without doubt, that it was a written process, as may be likewise proved by other arguments[4]: and secondly, that if the senate allowed the εἰσαγγελία (for in some cases at least they appear to have admitted or rejected it at discretion[5]), a day was named by the

[4] Isæus, de Pyrrhi hæred. p. 49. 25. Steph. makes use of this expression; ἀπογραφεὶς εἰς τὴν βουλὴν κακουργῶν, ὑποχωρῶν ᾤχετο, which is no doubt the same as εἰσαγγελθείς. See Matthiæ, de Judic. Athen. p. 237. not. 15. And an instance of a written εἰσαγγελία, by which Thessalus indicted Alcibiades, is extant in Plutarch, Life of Alcibiad. cap. 22.

[5] And this is the opinion of Heraldus, iii. 9. §. 1. When (says he) an information had been laid against any one, either in the senate or assembly of the people, the first question was, whether the εἰσαγγελία should be allowed. Whether this was the case with the people is not so certain: but

Prytanes for the trial of the offender. In the mean time, unless he provided bail, he could be imprisoned; but if charged with treason or embezzlement, the offer of bail was not accepted[6]. On the day of trial, after hearing the prosecution and defence, the senate gave their votes secretly (*κρύβδην ἐψηφίσατο*), in the same manner as the judges of the Heliæa in ordinary trials. Upon the conviction of the culprit, another question arose to be determined—the amount of the penalty which he should be sentenced to pay. If the senate thought fit to fine him in a sum not exceeding 500 drachmæ, he was condemned on the spot to pay it. If they thought him deserving of a still heavier fine, or of capital punishment, the case was referred to the Heliæa[7], since the senate could not impose a fine exceeding 500 drachmæ. [201] The usual order in which the whole transaction was performed, seems to have been that specified in a law of Timocrates, preserved by Demosthenes[8], which is as follows. *Τιμοκράτης εἶπεν· ὁπόσοι Ἀθηναίων κατ' εἰσαγγελίαν ἐκ τῆς βουλῆς ἢ νῦν εἰσὶν ἐν τῷ δεσμωτηρίῳ, ἢ τὸ λοιπὸν κατατεθῶσι, καὶ μὴ παραδοθῇ ἡ κατάγνωσις αὐτῶν τοῖς Θεσμοθέταις ὑπὸ τοῦ γραμματέως τοῦ κατὰ πρυτανείαν κατὰ*

had not the senate been permitted to use its own discretion on the subject, Lysias, in Nicomach. p. 185. 20. could not have spoken of it in the following terms: *ἡ βουλὴ, ὅταν μὲν ἔχῃ ἱκανὰ χρήματα εἰς διοίκησιν, οὐδὲν ἐξαμαρτάνει· ὅταν δὲ εἰς ἀπορίαν καταστῇ, ἀναγκάζεται εἰσαγγελίας δέχεσθαι, κ. τ. λ.*

[6] Demosth. adv. Timocr. p. 720. Cf. Herald. iii. 10. 5. seqq. and Matthiæ, de Judic. Athen. p. 233. not. 11.

[7] See Julius Pollux, viii. 52. *κἂν μὲν μέτρια ἀδικεῖν δοκῇ, ἡ βουλὴ ποιεῖται ζημίας ἐπιβολήν· ἂν δὲ μείζω, παραδίδωσι δικαστηρίῳ· τὸ δὲ τίμημα, ὅτι χρὴ παθεῖν ἢ ἀποτῖσαι.* I think these words prove with sufficient certainty the fallacy of Heraldus' opinion, that the penalty of *all* crimes to which *εἰσαγγελία* was applicable, was determined by law: an opinion by no means consistent with the nature of extraordinary crimes. I confess, however, that I am ignorant what share the accuser took in making the assessment. Heraldus, iii. 8. §. 9, contends that this was not made at all by the accuser, nor any counter-assessment (*ἀντιτίμησις*) by the accused, but that the penalty was determined solely by the judges, whether the senators, the people, or the Heliasts. In this opinion I have no objection to acquiesce, until some better suggestion be made on the subject.

[8] Advers. Timocrat. p. 720.

τὸν εἰσαγγελτικὸν νόμον, δεδόχθαι, τοῖς Θεσμοθέταις εἰσάγειν τοὺς ἕνδεκα εἰς τὸ δικαστήριον[9] ἐντὸς τριάκονθ' ἡμερῶν, ἀφ' ἧς ἂν παραλάβωσιν, ἐὰν μή τι δημοσίᾳ κωλύῃ. ἐὰν δὲ μή, ὅταν πρῶτον οἷόν τ' ᾖ. κατηγορεῖν δ' Ἀθηναίων τὸν βουλόμενον οἷς ἔξεστιν. ἐὰν δ' ἁλῷ, τιμάτω ἡ Ἡλιαία περὶ αὐτοῦ, ὅτι ἂν δοκῇ ἄξιος εἶναι παθεῖν ἢ ἀποτῖσαι. ἐὰν δ' ἀργυρίου [202] τιμηθῇ, δεδέσθω τέως, ἕως ἂν ἐκτίσῃ ὅτι ἂν αὐτοῦ καταγνωσθῇ. The provision made in the above law was to this effect: that if any one was brought before the senate by εἰσαγγελία, and imprisoned by its order, the judgment which had been passed on him by the senate should be delivered to the Thesmothetæ by the scribe of the Prytany, and those magistrates bring the culprit up for trial[1]. To this ancient law a new clause was subjoined by Timocrates, that if at any time the judgment or sentence (ἡ κατάγνωσις) was not delivered to the Thesmothetæ by the scribe, it should devolve upon the Eleven to bring the culprit to trial before the Thesmothetæ, within the space of thirty days after he had been committed to their charge for imprisonment, unless any public obstacle should have presented itself. Moreover, that any qualified citizen might appear against him as his accuser; that, in case of his conviction, the amount of the penalty to be imposed was to be determined by the Heliæa; and that, if this penalty was a fine, he should be imprisoned till he paid it.

But in crimes of an unusually heinous nature the senate

[9] In the editions, the text is here falsely punctuated, δεδόχθαι τοῖς Θεσμοθέταις, εἰσάγειν τοὺς ἕνδεκα. By a slight alteration, the sense, which I have given afterwards, is easily elicited, and there does not appear any cause to adopt the emendation of Heraldus (iii. 10. 7. p. 232.) δεδόχθω, τοὺς Θεσμοθέτας εἰσάγειν τοὺς ἕνδεκα εἰς τὸ δικαστήριον,—as if the Eleven themselves were ushered into court by the Thesmothetæ—an idea for which neither Heraldus offers, nor can I discover, any authority or reason. I imagine that those only can be said εἰσάγεσθαι εἰς τὸ δικαστήριον, who are either accusers or accused, that is, who take any part in the trial, which the Eleven certainly did not.

[1] This office of the Thesmothetæ is also mentioned by Pollux, viii. 88. οἱ Θεσμοθέται εἰσάγουσι τὰς ἐκ τῆς βουλῆς καταγνώσεις.

sometimes departed from the regular and established course, when the criminal evidently and without controversy deserved, upon conviction, either capital punishment, or, at least, a heavier fine than 500 drachmæ. In such cases, when it seemed unnecessary for the senate to take cognizance of, and pass previous judgment upon, the crime of the offender, he was at once sent before the Heliæa for trial, yet with an accompanying direction from the senate by what process he should be brought up, arraigned, and tried. This will be best understood from a decree of the senate preserved by the Pseudo-Plutarch, in the life of Antiphon[2]. [203] *Ἔδοξε τῇ βουλῇ μιᾷ καὶ εἰκοστῇ τῆς πρυτανείας, Δημόνικος Ἀλωπεκῆθεν ἐγραμμάτευε, Φιλόστρατος Παλληνεὺς ἐπεστάτει, Ἄνδρων εἶπε περὶ τῶν ἀνδρῶν, οὓς ἀποφαίνουσιν οἱ Στρατηγοὶ πρεσβευομένους εἰς Λακεδαίμονα ἐπὶ κακῷ τῆς πόλεως τῆς Ἀθηναίων, καὶ ἐκ τοῦ στρατοπέδου πλεῖν ἐπὶ πολεμίας νεὼς, καὶ πεζεῦσαι διὰ Δεκελείας, Ἀρχεπτολέμου καὶ Ὀνομακλέα καὶ Ἀντιφῶντα συλλαβεῖν καὶ ἀποδοῦναι εἰς τὸ δικαστήριον, ὅπως δῶσι δίκην. παρασχόντων δ' αὐτοὺς οἱ Στρατηγοὶ καὶ ἐκ τῆς βουλῆς οὕστινας ἂν δοκῇ τοῖς Στρατηγοῖς προσελομένοις μέχρι δέκα, ὅπως ἂν περὶ παρόντων γένηται ἡ κρίσις. προσκαλεσάσθωσαν δ' αὐτοὺς οἱ Θεσμοθέται ἐν τῇ αὔριον ἡμέρᾳ, καὶ εἰσαγόντων, ἐπειδὰν αἱ κλήσεις ἐξήκωσιν, εἰς τὸ δικαστήριον. περὶ προδοσίας κατηγορεῖν τοὺς ῥηθέντας καὶ τοὺς Στρατηγοὺς καὶ ἄλλους, ἄν τις βούληται. ὅτου δ' ἂν καταψηφίσηται τὸ δικαστήριον, περὶ αὐτοῦ ποιεῖν κατὰ τὸν νόμον, ὃς κεῖται περὶ τῶν προδόντων.* Now in this decree there is no mention made of the previous judgment of the senate; but, as the crimes of which Archeptolemus, Antiphon, and Onomacles were impeached, were so heavy, that it was at once evident that, if convicted, they deserved a much greater punishment than the senate could impose, that council considered nothing further was necessary than to give orders that the culprits should be arrested

[2] Life of the ten Orators, p. 833.

and brought before the Heliæa. An injunction is added specifying how this was to be accomplished. The same Strategi who had laid the information, and certain senators whom they might nominate, to the number of ten, were to bring them up for trial, in order that the culprits might be present on the occasion. This was an extraordinary case; and it appears that the senate gave the above orders in this one peculiar instance, because the information was not laid by private persons, but by magistrates: for in ordinary causes, in which the former was the case, it appears to have been the duty of the Eleven to bring up for trial the prisoners in their custody. [204] The senate moreover ordered the Thesmothetæ to provide for their trial on the very next day, in order that the Strategi, and those who had been nominated[3] accusers, together with any other person who pleased, might impeach them of treason. If they were pronounced guilty, the judges were to inflict the punishment which the laws provided for the crime of treason.

But we read that the people themselves sometimes also took cognizance of cases of εἰσαγγελία in assembly. This appears to have been done on two grounds. In the first place, it occasionally happened, that upon information being laid before the senate, that body, on account of the extent of the crime, or the rank and power of the criminal, did not think fit to act without the concurrence and co-operation of the people[4], to whose decision the case was accordingly referred. In the second place, the prosecutor sometimes brought the εἰσαγγελία of his own accord before the people and not before the senate. We

[3] *By the senate*, says Heraldus, iii. 10. §. 9. Yet it is possible that those may have been meant, who were chosen by the Strategi from the senators, for the purpose of bringing them to, and accusing them at, the trial. But this too was an irregular proceeding; for in ordinary cases the accusers were no doubt nominated from the senate, in the same manner as they were from the people, in other cases of εἰσαγγελία of which I shall speak shortly.

[4] See Matthiæ, de Judic. Ath. P. 2. p. 241.

are informed by Harpocration and Pollux[5] that this was done on the first regular assembly of the Prytany (*τῇ κυρίᾳ ἐκκλησίᾳ*). *Τῶν δ' ἐκκλησιῶν* (says the latter) *ἡ μὲν κυρία, ἐν ᾗ τὰς εἰσαγγελίας ὁ βουλόμενος εἰσαγγέλλει.* The very expression which he uses, *ὁ βουλόμενος εἰσαγγέλλει*, sufficiently proves that those *εἰσαγγελίαι* are not meant which the senate submitted to the decision of the people, after having been first brought before its own tribunal—for in such cases it was by the option of the senate, [205] not by the will of the informer, that they were referred to the people. Pollux alludes to those *εἰσαγγελίαι* which, as I have before observed, the prosecutor of himself brought before the people, and not before the senate. Yet I am convinced that this could not be done without special permission from the senate; though perhaps all that their permission amounted to was leave to announce the *εἰσαγγελία* in a program, or previous notice of an assembly, and an engagement that the Proedri should allow the accuser an appeal to the people. Pollux however elsewhere states that it was the duty of the Thesmothetæ to bring *εἰσαγγελίαι* before the people: *οἱ Θεσμοθέται τὰς εἰσαγγελίας εἰσαγγέλλουσιν εἰς τὸν δῆμον*[6]. Now this statement appears inconsistent with the former: for the Grammarian here attributes to the Thesmothetæ what he there assigned "*τῷ βουλομένῳ*." Yet we may easily reconcile the discrepancy, by supposing that the accuser had first to apply to the Thesmothetæ, and ask them, Whether they would have the name of the accused brought before themselves or some one of their number, or were of opinion that an *εἰσαγγελία* should be instituted? If they answered that an *εἰσαγγελία* could or ought to be brought, then either they or the accuser referred the matter to the people;—though, in fact, any one may be said *εἰσαγγέλλειν*, who gets an *εἰσαγγελία* brought by the Thesmothetæ in his own name.

[5] Harpocrat. in v. *κυρία ἐκκλησία*. Pollux, viii. 95.

[6] Pollux, viii. 87.

We will now proceed to describe as accurately as possible the manner in which the case was conducted in the assembly, after having been laid before the people, either by the senate, the Thesmothetæ, or the accuser himself. This subject, however, is unfortunately involved in so much obscurity, that we cannot expect to advance far without the aid of conjecture. The explanations of the Grammarians are brief and unsatisfactory; and not only are very few examples of trials before the people recorded by the ancients, but those of which mention is made in their works are described in a manner so cursory and incomplete, that it is impossible to derive from them any thing like a full and accurate knowledge of the order in which the transaction was carried on. The single instance of the trial of the ten generals, the particulars of which are given with some minuteness by Xenophon, [206] is scarcely to be depended upon, as it seems to have been conducted in a turbulent, and in some respects irregular manner. It appears, however, sufficiently certain that the first question which arose after information of the crime had been given in the assembly, was whether the people should take cognizance of the cause or not[7]. The accuser and some of the orators on his side endeavoured by their eloquence to establish the justice of the *εἰσαγγελία* in the eyes of the people, and to recommend that the trial should be held. The accused, on the other hand, and his party denied the commission of any crime, and maintained that there were no grounds for a trial. Thus Theramenes, in accusing the ten generals, is recorded by Xenophon to have said, *δικαίους εἶναι τοὺς Στρατηγοὺς λόγον ὑποσχεῖν, διότι οὐκ ἀνείλοντο τοὺς ναυαγούς.* He endeavours, therefore, to induce the people to proceed with the trial.

[7] The order which I have described in what follows, appears to have been the regular one in those *εἰσαγγελίαι* which were at once, and in the first instance, brought before the people. But in those which were referred to the people by the senate, I imagine that no regular and predetermined method was adopted, but various means employed, according as the senate had either investigated the merits of the case, or submitted it without any preliminary examination to the cognizance of the people.

The generals, on the contrary, maintain their innocence[8]. After sufficient discussion on both sides, the votes of the people were taken upon the apparent guilt or innocence of the accused, and the propriety of holding a further trial upon him. If the people thought him innocent, he was released, and the affair was carried no further: if guilty, a day for his trial had to be named, on which both the prosecution and defence were to be heard, and the votes of the people finally taken upon the case[9]. The speeches made in the first assembly were not, [207] of course, intended as the *regular* prosecution and defence, any more than the previous judgment of the people was for the ultimate condemnation. In the mean time, the accused, in case of not providing bail, either had been already imprisoned or was then arrested and secured by the senate[1]. The question was next put to the people, In what manner they would have the trial conducted, and what penalty they wished to impose upon the criminal, if found guilty[2]? And now both prosecutor [208] and de-

[8] Xenoph. Hellen. i. 7. §. 3. seq.

[9] That this was the regular order of the transaction is proved by the words of Euryptolemus in Xenophon, ut sup. §. 29. Δεινὰ δ' ἂν ποιήσητε (ποιήσαιτε) εἰ Ἀριστάρχῳ μὲν, πρότερον τὸν δῆμον καταλύοντι, εἶτα δὲ Οἰνόην προδιδόντι Θηβαίοις, πολεμίοις οὖσιν, ἔδοτε ἡμέραν ἀπολογήσασθαι, ᾗ ἐβούλετο, καὶ τἄλλα κατὰ τὸν νόμον προὔθετε· τοὺς δὲ στρατηγοὺς τοὺς πάντα ὑμῖν κατὰ γνώμην πράξαντας, νικήσαντας δὲ τοὺς πολεμίους, τῶν αὐτῶν τούτων ἀποστερήσετε. It is clear, from this passage, that the address to the people in the former assembly, by which the generals endeavoured to clear themselves of the charge, was not considered as their regular defence; as may be further proved from the words of Xenophon, §. 5. οὐ γὰρ προὐτέθη σφίσι λόγος κατὰ τὸν νόμον. Every one will perceive, too, at once, that the regular accusation and defence could not possibly have been gone through on the identical day on which the εἰσαγγελία was brought before the people: it was therefore necessary to assign another assembly for that purpose.

[1] Xenoph. ut sup. §. 3.

[2] In the case of the ten generals it was thus decreed: τὴν βουλὴν προβουλεύσασαν ἐσενεγκεῖν, ὅτῳ τρόπῳ οἱ ἄνδρες κρίνοιντο. The senate accordingly proposed the following way of proceeding: Ἐπειδὴ τῶν τε κατηγορούντων κατὰ τῶν στρατηγῶν καὶ ἐκείνων ἀπολογουμένων ἐν τῇ προτέρᾳ ἐκκλησίᾳ, ἀκηκόασι, διαψηφίσασθαι Ἀθηναίους πάντας κατὰ φυλὰς, θεῖναι δὲ ἐς τὴν φυλὴν ἑκάστην δύο ὑδρίας. ἐφ' ἑκάστῃ δὲ τῇ φυλῇ κήρυκα κηρύττειν, ὅτῳ δοκοῦσιν ἀδικεῖν οἱ στρατηγοὶ, οὐκ ἀνελόμενοι τοὺς νικήσαντας ἐν τῇ ναυμαχίᾳ, ἐς τὴν

fendant (with his advocates) exerted themselves to provide witnesses and every thing necessary to support and carry their respective causes, and recommend them to the people by every means in their power. When the day of trial arrived, the prosecutor and any one who chose to assist him[3] formally laid the accusation. The prisoner made his own defence, sometimes in chains, and guarded by a keeper on each side[4]. After this [209] the people

προτέραν ψηφίσασθαι, ὕτῳ δὲ μὴ, ἐς τὴν ὑστέραν. ἂν δὲ δόξωσιν ἀδικεῖν, θανάτῳ ζημιῶσαι, καὶ τοὺς ἕνδεκα παραδοῦναι, καὶ τὰ χρήματα δημοσιεῦσαι, τὸ δ' ἐπιδέκατον τῆς θεοῦ εἶναι. Now in this decree of the senate there are two points at variance with the laws. In the first place, it was wrong in considering the address of the generals in the former assembly as their regular defence; and in the second place, in wishing that the votes of the people should be taken upon all at once. On these grounds, Euryptolemus, the champion of justice and the laws of his country, opposes the decree, and entreats the people first to grant the accused at least one, or more days for preparing their defence, and secondly, to give their votes upon each of them separately. §. 20, 27.—We may here observe, that bills of this description, on the form of the trial, and the penalty to be imposed on the accused, upon conviction, could not be proposed to the people without the previous sanction of the senate (see Book I. chap. 9.). This we may learn from the case of Aristogiton, who was accused of *παράνομα*, and fined five talents, for having brought in a similar *ψήφισμα ἀπροβούλευτον*, as we are informed by Libanius, in the argument to the first oration against Aristogiton, p. 767. 8. (Libanius, by the way, no doubt derived his statement from the lost oration of Lycurgus against Aristogiton.) Hence it is also evident, that such bills could not be proposed at the same assembly in which the *εἰσαγγελία* was brought, but necessarily some days after, perhaps sometimes on the very day of the trial. Otherwise they must have been *ἀπροβούλευτα*, in those causes which were brought before the people at once by the accuser, and not submitted to them by the senate.

[3] Euryptolemus, in Xenophon, ut sup. §. 24. proposes: *κρινέσθωσαν οἱ ἄνδρες καθ' ἕνα ἕκαστον, διῃρημένων τῆς ἡμέρας τριῶν μερῶν· ἐνὸς μὲν, ἐν ᾧ ξυλλέγεσθαι ὑμᾶς δεῖ καὶ διαψηφίζεσθαι, ἐάν τε ἀδικεῖν δοκῶσιν ἐάν τε μὴ, ἑτέρου δὲ, ἐν ᾧ κατηγορῆσαι, ἑτέρου δὲ, ἐν ᾧ ἀπολογήσασθαι.* His anxiety that the votes of the people should be taken, before the accusation and defence, upon the question of their apparent guilt or innocence, and upon the propriety of holding a trial upon them, arose no doubt from the circumstance of the *διαχειροτονία* and previous judgment having been informal in the first assembly. See §. 7.

[4] In the case of a trial for treason, *ἐάν τις τὸν δῆμον ἀδικῇ*, this custom was introduced by a decree of one Cannonus, who is not only mentioned by Xenophon, ut sup. §. 21 and 37, but also by Aristophanes, Eccles. v. 1081. and the Scholiast on the latter passage, who has the following remark: *ψήφισμα*

were desired to give their verdict by ballot: for which purpose two urns were placed for each tribe, one destined for the reception of the condemnatory votes, the other for those of acquittal. If the criminal was found guilty, that penalty was imposed upon him which had been previously determined.

But the people did not always choose to take cognizance of crimes which were brought before them: they sometimes submitted them to the decision of the Heliæa. Thus it not unfrequently happened that the same cause was tried in the senate, the assembly, and the Heliæa[5]. If the affair was referred to the last-mentioned court, a decree was drawn up in the same form with, or similarly to, that which had been issued by the senate. What this form was, we know from the bill of the senate upon the case of Antiphon, which we have already quoted. The purport of this decree was to determine by whom and in what manner the criminal should be brought to trial; at what time his trial should be held; by whom, and on what charge, he should be impeached; and lastly, what penalty he should pay in case of his condemnation. Now unless the people had otherwise ordained, he was brought to trial by the Thesmothetæ[6]: and he was accused [210] not

ἐγεγράφει, κατεχόμενον ἑκατέρωθεν ἀπολογεῖσθαι τὸν κατ' εἰσαγγελίαν κρινόμενον. Κρατῖνος δὲ καὶ πρὸς κλεψύδραν κελεῦσαι. Ξενοφῶν δὲ (i. 7. 21.) *εἰς τὸ βάραθρον ἐμβληθέντα ἀποθανεῖν.* The Greek commentator has misunderstood Xenophon, who does not state this, but *ἀποθανόντας ἐς τὸ βάραθρον ἐμβληθῆναι*, that is, their bodies after death. What follows is exceedingly corrupt, and I cannot now spare time to propose emendations of it. Hudtwalcker de Diætet. p. 94. seq., has some ingenious remarks on the decree of Cannonus.

[5] See Matthiæ, de Judic. Ath. P. 2. p. 241.

[6] Pollux, viii. 87. *οἱ Θεσμοθέται—τὰς εἰσαγγελίας εἰσαγγέλλουσιν εἰς τὸν δῆμον· καὶ τὰς χειροτονίας καὶ τὰς προβολὰς εἰσάγουσιν* (scil. *εἰς τὸ δικαστήριον*). Thus the passage should be punctuated, and not, as it usually is, *τὰς εἰσαγγελίας εἰσαγγέλλουσιν εἰς τὸν δῆμον, καὶ τὰς χειροτονίας.* What sense can be attached to the expression *τὰς χειροτονίας εἰσαγγέλλειν*? Χειροτονίαι here mean, I imagine, the previous judgment of the people, upon which the judges had to give their votes; i. e. which they had either to show their acquiescence in or disapprobation of, by the expression of their own opinion. In the same manner the Thesmothetæ are said afterwards *εἰσάγειν*

only by the prosecutor[7], but by certain orators, generally ten in number, nominated for the occasion by the people, and called *συνήγοροι* or *κατήγοροι*, who received as a fee a drachma from the treasury[8]. [211] If the prosecutor lost his cause and failed in obtaining at least one fifth of

τὰς τῆς βουλῆς καταγνώσεις. Should any one however in this passage propose to read *καταχειροτονίας* for *χειροτονίας*, I shall not object. Of *προβολὴ* I shall speak hereafter.

[7] For it seems probable, from the nature of the case, that the prosecutor took the *chief* part in the accusation: nor is there sufficient reason for supposing, with Heraldus, iii. 10. §. 9, that unless he was appointed one of the *συνήγοροι* by the people, he could not take any part at all in it. Those who instituted an *εἰσαγγελία*, had also to make good the charge for which the action was brought; as was the case in other public prosecutions. Otherwise it was a *μήνυσις*, not an *εἰσαγγελία*: for in the former case the people appointed certain commissioners, called *ζητηταί*, of whom we shall speak hereafter, to investigate the matter, unless evident in itself.

[8] See Book I. chap. 10. Plutarch, Pericl. c. 10. *Ἦν μὲν γὰρ εἷς τῶν (τοῦ Κίμωνος) κατηγόρων ὁ Περικλῆς, ὑπὸ τοῦ δήμου προβεβλημένος.* Plutarch is speaking of the trial of Cimon, who was accused of having been bribed by Alexander to desist from his expedition, when he could have invaded and conquered a great part of Macedonia. Plut. Cimon, c. 14. This charge was exactly similar to that on which his father Miltiades was impeached by an *εἰσαγγελία* before the people, as we have before mentioned. We cannot therefore doubt but that the prosecution of Cimon was also by an *εἰσαγγελία*. Plutarch, Demosth. chap. 14: *τῶν Ἀθηναίων ἐπί τινα προβαλλομένων αὐτὸν κατηγορίαν—οὐχ ὑπήκουε.* In Dinarchus, also, adv. Demosth. p. 38. 43. and adv. Aristogit. p. 79. Reiske, mention is made of the public appointment of certain accusers, although Demosthenes, Aristogiton, and the rest, who were suspected of having been corrupted by Harpalus, were not prosecuted by *εἰσαγγελία*. These accusers were called *συνήγοροι* in a decree of the senate in the Pseudo-Plutarch, in the Life of Antiphon. Hence also Aristophanes, Vesp. v. 480.

Ἀλλὰ νῦν μὲν οὐδὲν ἀλγεῖς, ἀλλ' ὅταν ξυνήγορος
Ταὐτὰ ταὐτά σου καταντλῇ καὶ ξυνωμότας καλῇ.

In this passage also *συνήγορος* is a public accuser, in a trial for treason. On the meaning of the word, see Heraldus, iii. 10. §. 12. On their pay, the Scholiast to Aristoph. Vesp. v. 689. *ἐλάμβανον γὰρ οἱ ῥήτορες δραχμὴν, ὅτε συνηγόρουν ὑπὲρ τῆς πόλεως.* I imagine, from Dinarch. adv. Aristogit. p. 79. that their number was usually ten; for I have already shewn (Book I. 10.) that the authority of Aristotle which is adduced by the Scholiast on Aristophanes, relates to a different thing. From the examples which I have alleged, it is plain that the office, so far from being perpetual, as some have supposed, was not even of a year's continuation. On another description of *συνήγοροι*, see Lex. Rhetor. in Bekk. Anecdot. I. p. 301; Aristot. Polit. vi. 8; Boeckh. Publ. Œcon. I. p. 207.

the votes, he was fined 1,000 drachmæ—and anciently to a still greater amount. The case is clearly stated in Harpocration: ὁ δὲ διώκων, ἐὰν μὴ ἕλῃ, οὐδὲν ζημιοῦται, πλὴν ἐὰν τὸ πέμπτον μέρος τῶν ψήφων μὴ μεταλάβῃ, τότε χιλίας ἐκτίνει· τὸ δὲ παλαιὸν καὶ οὗτοι μειζόνως ἐκολάζοντο[9]. The words of Pollux are a little more obscure: ὅτι δὲ ὁ εἰσαγγείλας καὶ οὐχ ἑλὼν ἀζήμιος ἦν, Ὑπερίδης ἐν τῷ ὑπὲρ Λυκόφρονός φησι. καίτοι γε ὁ Θεόφραστος τοὺς μὲν ἄλλας γραφὰς γραψαμένους χιλίας τ' ὀφλισκάνειν, εἰ τοῦ πέμπτου τῶν ψήφων μὴ μεταλάβοιεν (thus read for καταλάβοιεν) καὶ προσατιμοῦσθαι· τοὺς δὲ εἰσαγγέλλοντας μὴ ἀτιμοῦσθαι μέν, ὀφλεῖν δὲ τὰς χιλίας. ἔοικε δὲ τοῦτο διὰ τοὺς ῥᾳδίως εἰσαγγέλλοντας ὕστερον προσγεγράφθαι[1]. Pollux therefore cites Hyperides in proof that those who failed in an action by εἰσαγγελία suffered no loss even though they did not obtain the fifth part of the votes. Heraldus also embraces this opinion[2]; and holds that εἰσαγγελία differed from γραφὴ in this additional respect, that in case of failure in the former, no penalty was or could be imposed, because it very frequently happened that the prosecution was conducted, not by the person who brought it, but by certain advocates nominated by the people. This opinion, destitute as it is of all authority, may be fairly regarded as erroneous, until some proof be adduced [212] in support of it; and that this never will be done I have little hesitation in pronouncing. But the view of this subject attributed to Hyperides by Pollux, is in the first place at variance with the statements of Harpocration, a writer in every respect as conversant with the Greek orators as Pollux, and in the knowledge of Attic law and Attic antiquities incontestibly superior; and in the second place contradictory to Theophrastus, who studied with peculiar attention, and attained high proficiency in, the same subject, the laws of Attica. There can be no doubt therefore that Harpocration and Theophrastus are

[9] Harpocrat. in v. εἰσαγγελία.
[1] Pollux, viii, 52, 53.
[2] Lib. iii. cap. 14. §. 5.

worthy of more credit than Pollux. And that no one may be influenced by the authority of Hyperides, we may observe, that nothing is more probable than that Pollux should have inaccurately distinguished between the different kinds of *εἰσαγγελία*. There was, as we have before remarked, another *εἰσαγγελία*, which applied to the maltreatment of parents, heirs, and wards: and there was no penalty attached in this case to the prosecutor if he failed:—*Ἑτέρα δὲ εἰσαγγελία λέγεται ἐπὶ ταῖς κακώσεσιν· αὗται δέ εἰσι πρὸς τὸν ἄρχοντα, καὶ τῷ διώκοντι ἀζήμιοι, κἂν μὴ μεταλάβῃ τὸ πέμπτον μέρος τῶν ψήφων*[3]. And I have no doubt that to this *εἰσαγγελία* the passage of Hyperides alluded, which Pollux has falsely and carelessly applied to the whole class of *εἰσαγγελίαι*. If this be really the case, we may dispense with the conjecture which Pollux proposes for the purpose of reconciling the discrepancy between Hyperides and Theophrastus; viz. that in later times only the prosecutor was liable to a penalty, which did not exist at first, but was subsequently instituted as a check upon the malicious actions so frequently and unwarrantably brought against the innocent. These two grammarians give perfectly consistent accounts when they are speaking of the different kinds of *εἰσαγγελίαι*: and so far from this penalty having been introduced in later times, it was in fact originally much heavier, and subsequently diminished[4].

[3] Harpocrat. v. *εἰσαγγελία*. Compare Isæus, de Pyrrhi hæred. p. 42. 30. Steph. Demosth. in Pantæn. p. 979, 980.

[4] Having thus given, as I hope, a probable and tolerably satisfactory account of this subject, I have little fear that the opinion of Luzac will still be thought worthy of much consideration. "Scilicet," (he observes, de Socr. Civ. p. 110.) "ut recte Pollux, pœna infamiæ aliis in causis præter mulctam statuta contra illos, qui per calumniam accusabant, seriori Reip. ætate abrogata fuit in accusationibus publicis, quæ *εἰσαγγελίαι* dicebantur, *ut eo tutius faciliusque calumniatores contrà innocentem quem vis grassarentur.* Id est, quod aiunt Harpocration et Suidas: *καὶ οὗτοι τὸ παλαιὸν μειζόνως ἐκολάζοντο.*" Not to mention other points in this opinion of his, it is most strange that he should suppose Pollux to apply the word *προσγεγράφθαι* not to that, which was omitted at first and afterwards added to the law, but to that which was added at first and omitted afterwards.

[213] According to the law of Solon, 1000 judges used to sit on these causes. Afterwards, however, in the time of Demetrius Phalereus[5], their number was increased to 1,500, two or three courts having been joined in one, which was not unfrequently done in other public causes of greater moment[6]. Luzac proposes a strange supposition, that when [214] we read of any εἰσαγγελία being referred by the senate to the people, we are not to suppose the whole body of the people to be meant, but merely the Heliasts, and these too not distributed in their respective courts, but assembled in one company, as they used to be when judgment had to be pronounced on any case in the name of the whole people[7]. To this invention of his own he immediately subjoins another, in which he informs us, that in the trial of most public offences, the great court of the Heliæa sustained the part of the people itself, and that the judges for this reason assembled after all due ceremonies and expiations had been performed, as if the meeting had been actually an assembly of the people[8]. In this meeting then, which he takes care to inform us was not the real assembly, but only resembled

[5] The passage in Pollux viii. 53. is ambiguous: χίλιοι δὲ κατὰ μὲν τὸν Σόλωνα τὰς εἰσαγγελίας ἔκρινον, κατὰ δὲ τὸν Φαληρέα καὶ πρὸς πεντακόσιοι. Now this might be interpreted, with Kühn, to mean *according to the law of Phalereus*, as κατὰ Σόλωνα means *according to the law of Solon;* or, with Luzac (de Soer. Civ. p. 110.) to mean "secundum Demetrium Phalereum, in libris de legibus Atheniensium." The preposition κατὰ, however, is properly the same as ἐπὶ in the following passage of Pollux: τῆς δὲ ἀργίας, ἐπὶ μὲν Δράκοντος, ἀτιμία ἦν τὸ τίμημα, ἐπὶ δὲ Σόλωνος, εἴ τρίς τις ἁλῴη, ἠτιμοῦτο (viii. 42.) *In the time of.* But what prevailed in the time of Draco or Solon, prevailed, no doubt, in conformity with their laws: though it is not so certain that the same consequence holds good in what prevailed in the time of Demetrius. For my part, I prefer following Kühn in this passage, on account of the similar expression κατὰ τὸν Σόλωνα which immediately precedes; especially since Pollux might so easily have used some other construction to avoid the ambiguity, had he intended some other meaning. On Demetrius as a legislator see Richter, Specim. animadv. de vett. legum latt. p. 61.

[6] See Matthiæ, de Judic. Ath. P. 2. p. 251 seq. from which the errors of Luzac may be corrected, de Soer. Civ. p. 111.

[7] De Soer. Civ. p. 109. [8] Ibid. p. 111.

it, the ten Proedri of the same tribe, with their Chairman, performed the office of *εἰσαγωγεῖς* in the name of the senate, that is, referred the cause, after having previously investigated it themselves, to the final decision of the judges. The nine Proedri of different tribes he conceives to have presided at the trial, in the capacity of unconcerned and unemployed judges[9], since the other Proedri performed the part of accusers. The whole of this theory is so utterly destitute of all authority, so directly at variance with the undisputed testimony of the ancients, and so absurd and inconsistent with itself, that no one, after having read with attention our remarks upon *εἰσαγγελία*, will be desirous that we should waste time in refuting its fallacies. Indeed we shall perhaps be asked to explain how it can have happened that such a man as Luzac, who is deficient neither in learning nor ability, should have been led to commit such errors. Suidas, it must be confessed, favours, or rather appears to favour, the views of Luzac in the following passage, where, speaking of the *Ἐπιστάται*, [215] he says: *ἐπειδὰν δὲ οἱ Πρυτάνεις συναγάγωσι τὴν βουλὴν καὶ τὸν δῆμον* (thus Luzac has taken upon himself to read instead of *ἢ τὸν δῆμον*), *ὁ Ἐπιστάτης ἕνα κληροῖ καὶ τὸ πρᾶγμα παραδίδωσιν. αὐτὸς δὲ εἰσάγει τὴν δίκην καὶ ἐπιμελεῖται τοῦ κατὰ τὸν νόμον πάντα γίνεσθαι καὶ μηδὲν παραλειφθῆναι πρὸς τὸ διδαχθῆναι τοὺς δικαστάς.* "The business, therefore," says Luzac, "which the Epistates of the senate, in the name of the Prytanes, deputed to the further cognizance of the other Epistates, the Chairman of the nine Proedri of different tribes, was a *δίκη*, a trial meant to be held by the people itself,—a cause in which the people acted as judges, or, perhaps, to speak more correctly, of which those judges took cognizance, who acted as the representatives of the whole people in these public trials." He therefore supposes that Suidas, in the above passage, alluded to *εἰσαγγελία*; and he flatters himself that his supposition is strongly confirmed by the

[9] Ibid. p. 109. and 111.

words of the same Grammarian under *εἰσαγγελία*:— *Εἰσαγγελία κυρίως ἡ περὶ κοινῶν (καινῶν) καὶ δημοσίων ἀδικημάτων εἰσαγομένη ὑπὸ τῶν Πρυτανέων δίκη. κ. τ. λ.* Remembering, then, that the Heliasts were mentioned, both by other writers and by Pollux, in causes of *εἰσαγγελία*, but imagining that Suidas in the former passage is speaking of cases of *εἰσαγγελία* being tried by the people; and perceiving moreover that Harpocration states such cases to have been usually brought before the people, he fancied he could easily reconcile these apparent inconsistencies by taking it for granted that by *ὁ δῆμος*, the assembly of the people, nothing else was meant than their representatives, the great court of the Heliasts. In the next place, from the statement of Suidas that the Chairman of the Prytanes *εἰσάγει τὴν δίκην*, but refers the management of the case, *τὸ πρᾶγμα*, to the nine Proedri of different tribes; Luzac thinks it evident, that in these trials, [216] which, though in fact only a meeting of the judges, were yet called an assembly of the people, the Prytanes performed the part both of *εἰσαγωγεῖς* and accusers, but were obliged to yield the right of presiding on the occasion to these nine Proedri. And thus he conceives that he has furnished a beautiful elucidation of the whole mystery. But, not to lose time in repeating any of our former arguments, in the first place the above passage in Suidas about the Epistatæ, relates to any business whatever transacted in the assembly, as well as to *εἰσαγγελία*. It will be recollected that I have before remarked[1] the confusion frequently made by the Grammarians of the later ages between the courts and the assemblies, the Ecclesiasts and the Dicasts. For, as these writers are generally inaccurate in dates, and in the habit of indiscriminately making use of any sources of information they may meet with, they have been led into this error by referring solely to the customs prevalent in the latest times of the republic, when most causes of a more

[1] Book I. chap. v.

important nature were committed to the decision of the people in assembly, and beside this scarcely any other privilege was reserved for them amid the wreck of their former power. And thus Suidas, in the above passage, has used the word δίκην as *speciem pro genere;* one, and that the most important, kind of business, for business in general transacted in the assembly. And by the δικασταὶ nothing more is to be understood than the ἐκκλησιασταί. Hence I think it certain, that the ideas of Luzac about the office of the nine Proedri of different tribes, as unoccupied and independent judges in these popular trials, are completely groundless and erroneous. The other passage in Suidas about εἰσαγγελία, should evidently not be confounded with the former. We must recollect, that εἰσαγγελίαι were in most cases brought first before the senate, where the Prytanes no doubt performed the duty of εἰσαγωγεῖς, as well as in those cases of εἰσαγγελία which were [217] referred by the senate to the people in assembly; but certainly not in those which were brought at once before the people by the accuser, or which were submitted by the senate or the people to the cognizance of the Heliæa: for in these cases we have before shewn that the Thesmothetæ introduced the cause.

Having therefore showed the instability of the foundations on which Luzac builds his arguments, it will be seen at once in how precarious a situation the whole of his superstructure must stand; in which condition we will at present leave it, while we proceed to a new subject of discussion.

CHAPTER IV.

On certain other Extraordinary Public Trials; and on Informations laid before the People.

We find in the ancient writers certain instances recorded of causes having been tried by the people, in which there

is not only no mention made of εἰσαγγελία, but it also appears improbable, from other reasons, that the actions should have been originally instituted by that procedure. Such cases then will be the subject of the present chapter.

To comprise the whole under one general definition—there were certain public crimes of an extraordinary or unusually heinous nature, of which cognizance was taken by the people in assembly, although no formal accusation had been brought against the perpetrators of them by a private individual; for that εἰσαγγελία cannot be considered otherwise than *formal*, is evident from the preceding chapter. In the cases to which we now allude, the offender was either prosecuted by some particular magistrate, *ex officio*, or brought before the assembly by the magistrates, through the medium of an information laid by some private person, who had either caught him in the fact, and brought him before them, or given evidence whereby his arrest was effected. Or lastly, it sometimes happened that certain notorious and manifest misdemeanours, for which the peculiar circumstances of the times rendered a formal impeachment impracticable, [218] or the risk attending the prosecution deterred any private individual from undertaking it, were mentioned in the assembly, and the people decided to take cognizance of them at once.

To the first of these cases we must refer a law cited by Æschines respecting the disorderly, indecent, or violent behaviour of the orators in the senate or the assembly. I have already quoted it at length [1], and shall now subjoin a translation of it.

" If any orator, either in the senate or the assembly,
" shall speak upon a subject not under consideration at
" the time, or upon more than one thing at once, or twice
" upon the same, or shall abuse or slander any individual,
" or interrupt another whilst speaking, or rise whilst the
" Prytanes are conferring with the people, and speak of

[1] Book I. chap. 10, p. 118, where I have ventured to introduce several emendations.

" matters not upon the bema[2] (i. e. not under considera-
" tion), or use seditious language, or forcibly eject the
" Chairman: upon the conclusion of the meeting in the
" senate or assembly, let the Proedri have the power of
" fining him to the amount of not more than fifty drachmæ
" for each offence, and of having his name registered in
" the books of the Exactors[3]. And if he shall be deemed
" deserving of a heavier penalty, let them refer the case
" to the senate, or to the people at the next assembly.
" Let them pass judgment in the senate, after the cita-
" tions have been read: and if he be convicted, the sena-
" tors voting secretly by ballot, let the Proedri deliver his
" name to the Exactors." Offenders, therefore, [219] against this law could be brought before the next assembly of the people by the Proedri, in order to have sentence passed upon them; or, in case the people did not choose to decide themselves, to be by them remanded for trial before the court of the Heliæa. And this appears to have been chiefly done if they were thought deserving of a heavier penalty than five hundred drachmæ, or if the misdemeanour had been committed in the assembly, and not in the senate. I much doubt whether there be more than this single instance recorded of crimes being prosecuted by magistrates *ex officio* in the assembly.

But we find several examples of informations being laid before the people in assembly by private individuals. The most remarkable one is the case of Agoratus, narrated by Lysias[4]. After the defeat of the Athenians at Ægos Potamos, when overtures for peace with the Lacedæmonians were projected, and one party contended that

[2] ἀνεστηκὼς λέγῃ περὶ τῶν μὴ ἐπὶ βήματος. I have already observed that there appears to me to be considerable obscurity in these words, and that the passage seems imperfect. If, however, any one should maintain its integrity, I have little doubt that of the two explanations suggested in p. 119, he will prefer that which I have adopted in my translation, after all the commentators.

[3] ἐγγράφειν τοῖς Πράκτορσιν. What this was, will be found in Boeckh, Publ. Œcon. i. p. 167.

[4] Orat. in Agorat. p. 130. 15—132. 6.

it should be made on any terms—in reality because they anticipated that an occasion might thereby be presented to them of effecting a revolution and overthrowing the democracy; while others again, especially the Strategi and Taxiarchs, perceiving their designs, opposed them strenuously:—while circumstances were thus situated, the former party, in order to quash the latter, resolved to assail them with groundless accusations, and for that purpose suborned one Agoracritus, a slave, to give false information against them. This man accordingly, first in the senate and afterwards in the assembly, impeached by name many of their number. *Οὕτω σφόδρα* (says Lysias) *τινὲς ἐπεμελοῦντο, ὅπως καὶ ἐν τῷ δήμῳ περὶ τῶν στρατηγῶν καὶ τῶν ταξιάρχων μήνυσις γένοιτο, ὥστε καὶ ἐκεῖ παράγουσιν εἰς τὸν δῆμον.* The people, misled by the fraudulent intrigues of this faction, decreed that the accused should be arrested, and tried on the charge of treason before a great court of Heliasts composed of 2000 judges, i. e. of four courts combined[5]. [220] A no less remarkable instance of a similar information is recorded by Andocides, in his oration *de Mysteriis*[6]. He states

[5] Lysias has not given the actual decree, nor clearly specified the purport of it. But I think it is evident that the people passed the above resolution, from the words of the orator, p. 133. 3. where he tells us, that after peace had been established, and the Thirty appointed, the trial of these men was held in the senate, and not in conformity with the wish of the people: *ἐπειδὴ τοίνυν οἱ τριάκοντα κατεστάθησαν, εὐθέως κρίσιν τοῖς ἀνδράσι τούτοις ἐποίουν ἐν τῇ βουλῇ· ὁ δὲ δῆμος ἐν τῷ δικαστηρίῳ ἐν δισχιλίοις ἐψηφίσατο.* This passage is most erroneously translated by Reiske: "Populus autem in tribunali per bis mille virorum, personam populi gerentium, suffragia pronuntiabat;" whereas the sense really is: "but the people had ordered that they should be tried in court before 2000 judges."

[6] P. 2. 29—3. 35. Isocrates, however, de Bigis, p. 828. and Plutarch, vit. Alcibiad. cap. 19 and 22. relate that Alcibiades was accused of this profanation by *εἰσαγγελία*. That their testimony may not appear inconsistent with that of Andocides, it must be observed, that the information of which Andocides speaks was laid before Alcibiades had departed with the fleet for Sicily. Before he went, he earnestly entreated, that if they had any charge to bring against him, they would bring it while he was there to make his defence, and not accuse him in his absence. His enemies, however, seeing that they could not then injure him, determined to wait till he was gone, and so assail him behind his back. Corn. Nep. vit. Alcib. Compare Thucyd. vi.

that the first notice of the profanation of the Mysteries, with which he was himself charged, and for which Alcibiades and many others were condemned, was given to the people in the following manner. A certain victor at the Pythian games arose in the assembly, and stated that he had incontestible proof of the mysteries [221] having been celebrated in a private house by Alcibiades and many others; and that if the people would guarantee impunity to the informant, a slave, who had been present at the sacrilegious transaction, should be produced to give full evidence. The Prytanes therefore gave orders that all who had not been initiated should withdraw from the assembly, and that the slave should be summoned before them, who, upon security (ἄδεια) being promised him, gave up the names of a number who had been present. Thus information of this offence having been given in assembly, the whole affair was afterwards submitted to the arbitration of the senate [7]; and as the number of the accused daily increased, certain commissioners called ζητηταὶ were appointed to examine them, and inquire into the strength of the evidence adduced against them [8]. They were subsequently imprisoned, and made their defence before the Heliastic Court, those only who had been initiated sitting as judges [9]; and the result was the capital condemnation of a considerable number [1]. Now

29. When, therefore, they imagined he had arrived at Sicily, he was impeached in his absence by Thessalus the son of Cimon, by εἰσαγγελία. See Thucyd. vi. 61. This is the only way in which the discrepancy seems capable of being reconciled. Isocrates, as an orator and not an historian, does not give a very accurate account of the transaction.

[7] Andocid. p. 3. 13. ψηφισαμένης δὲ τῆς βουλῆς, ἦν γὰρ αὐτοκράτωρ, &c.

[8] Ibid. p. 3. 6. Compare 6. 22.

[9] Ibid. p. 3. 27.

[1] Other examples of informations laid before the people in assembly may be found in Plutarch, vit. Pericl. cap. 31. Μένωνά τινα τῶν Φειδίου συνεργῶν πείσαντες ἱκέτην ἐν ἀγορᾷ καθίζουσιν, αἰτούμενον ἄδειαν ἐπὶ μηνύσει καὶ κατηγορίᾳ τοῦ Φειδίου. Προσδεξαμένου δὲ τοῦ δήμου τὸν ἄνθρωπον, καὶ γενομένης ἐν ἐκκλησίᾳ διώξεως, κλοπαὶ μὲν οὐκ ἠλέγχοντο, κ. τ. λ. Dinarch. in Demosth. p. 102. 16. ἐν δὲ τῇ ἐκκλησίᾳ ταύτῃ τῇ πρώην γεγενημένῃ προσάγων καὶ κατασκευάζων ψευδῆ μηνυτὴν, ὡς ἐπιβουλευομένων τῶν νεωρίων.

from these examples we may learn, in the first place, the exact difference between *information* (*μήνυσις*, *indicium*) and *impeachment* (*εἰσαγγελία*, *delatio*),—though the Greek terms are sometimes used[2] indiscriminately by the ancient writers. The individual who brings an *εἰσαγγελία* [222] performs also the part of a formal accuser; it is he who prosecutes the defendant in court, and uses every means in his power to procure his conviction, by collecting and producing evidence, proofs, witnesses—and, if he fails in procuring the fifth part of the votes, he is fined a thousand drachmæ. An *informant*, on the contrary, is usually either an accomplice in the act or a slave. Neither of these can properly be the accuser; and upon neither, therefore, devolves the duty of bringing the prosecution, or of providing evidence and witnesses, should any be required, but upon the *ζητηταὶ* nominated by the people. And lastly, if their information be thought worthy of credit, they are permitted to escape with impunity, even though accomplices in the crime[3], and are sometimes even rewarded[4]. It so happens that such causes as these were usually referred to the decision of the Heliæa; there seems, however, no reason to doubt that the people could, if they pleased, assume to themselves the cognizance of them, and act in the capacity of judges.

The case of one Hierocles, recorded by Libanius[5], proves that if an offender was caught in the fact, he was sometimes brought before the Prytanes, and by them

[2] See chap. iii. of this book.—Lycurg. in Leocr. p. 168. 34. *ἐγὼ τοίνυν ὑμῖν μηνύω τὸν ἀφανίζοντα ταῦτα πάντα.* Compare the Pseudo-Plutarch, in the life of Andocides, p. 834. C. who states that he was *εἰσαγγελθεὶς* instead of *μηνυθείς*. Hesychius, moreover, observes that *μήνυσις* was also called *ἀπογραφή*: *ἀπογραφή· ἀρίθμησις, ἢ ἡ γινομένη μήνυσις.* The reason is, that these informations were delivered in writing, whence we find *ἀπογράφειν* for *μηνύειν* in Andocid. de Myst. 2. 44. 3. 14, 25. and elsewhere. Compare Lysias, in Agorat. 132. 26. 30. 32. 41.

[3] Andocid. de Myst. 2. 40; 3. 11; 4. 4. Lys. in Andocid. p. 105. 19.

[4] Andocid. p. 4. 36. Lys. p. 109. 38. See Taylor, Lect. Lys. p. 314. Plut. Pericl. cap. 31.

[5] In Argum. Orat. 1. adv. Aristogit. p. 767. seq.

produced in the assembly. This man was arrested in the act of carrying some sacred vestments, by Pythangelus and Scaphon, who brought him before the Prytanes. The next day he was taken by those magistrates into the assembly, where he urged in his defence [223] that he had been employed by a priest to carry the vestments to a particular place[6] for sacred purposes. Upon this Aristogiton moved, that if the accused confessed the charge he should be punished at once, but if he denied it, an examination into the matter should be instituted. This motion, however, was not carried: for as no previous bill of the senate had been issued upon the subject, and the measure proposed was of an atrocious character, the author of it was accused of *παράνομα* by Phanostratus, the father of Hierocles, and fined in consequence five talents by the court. Libanius has not thought fit to inform us what the people determined in the case of Hierocles. One point, however, appears sufficiently certain, that they had in general the same power in these causes as in *εἰσαγγελία*.

There is an instance of the same kind as the last, described by Demosthenes[7]. The orator had arrested and brought before the assembly one Antiphon, as he was lurking in the Piræus, with the apparent design of fulfilling an engagement he had made to Philip, to burn the naval arsenal at Athens. Being however dismissed, chiefly through the intrigues of Æschines, who brought certain invidious charges against Demosthenes, search was made for him, and he was again arrested, by order of the Areopagites, who delivered him up to the judges[8]. Now Demosthenes had not himself the power to bring him before the assembly; it was necessary for him to

[6] *ἵνα κομίσῃ πρὸς τὸ ἱερὸν κυνηγέσιον.* What or where this was I confess with Taylor that I do not know. H. Wolf conceives it to be the proper name of some place.

[7] De Coron. p. 271.

[8] To this Dinarchus alludes, in Demosth. p. 98. 13. *ἐστρέβλωσαν Ἀντιφῶντα καὶ ἀπέκτειναν οὗτοι (οἱ δικασταὶ) τῇ τῆς βουλῆς ἀποφάσει πεισθέντες.*

apply first to the Prytanes, and request them to allow him and the offender he had arrested to have an audience with the people. Although this is not expressly asserted, yet it admits of no doubt from the very nature of the case. The Areopagites had the peculiar privilege [224] of inquiring into malefactors, and delivering them up to trial, even without the authority of the people[9].

Lastly: in some cases of heinous and notorious crime, where no one appeared as accuser, the people, by permission of the senate (without which nothing could be done in assembly), either itself held a trial, or commissioned it to be held by the judges. Thus, to adduce the most notable example first, when upon a certain occasion it was universally agreed that many of the orators had been corrupted by Harpalus, the people, dreading the consequences, and fearing that the account would be demanded from themselves, ordered that all on whom the suspicion fell, should be examined. In conformity with this injunction, the houses of each were at first searched; but upon Demosthenes proposing a bill in assembly, the further investigation of the matter was committed by the people to the Areopagites[1];—a duty which we learn from Dinarchus[2] frequently devolved upon them in similar causes. The Areopagites give information to the people of those whom they find to have been bribed, and are said *ἀποφαίνειν*, while the information itself is called *ἀπόφασις*. The offenders are brought before a great tribunal of Heliasts, composed of three courts combined, to the number of 1500 judges, and ten orators are nominated by the people to act as public

[9] Dinarch. in Demosth. p. 96. 28. *Ἀνάγκη τὴν βουλὴν τὴν ἐξ Ἀρείου πάγου κατὰ δύο τρόπους ποιεῖσθαι τὰς ἀποφάσεις πάσας. τίνας τούτους; ἤτοι αὐτὴν προελομένην καὶ ζητήσασαν, ἢ τοῦ δήμου προστάξαντος αὐτῇ.*

[1] See Plutarch, Demosth. cap. 25. 26.

[2] Dinarch. in Demosth. p. 90. 24. *ζητεῖν τὴν βουλὴν περὶ αὐτῶν, ὡς αὐτῇ πάτριόν ἐστιν.* See ibid. p. 97. 26; 98. 8. seq.

accusers[3]. [225] In such cases the judges either finally acquit or condemn the culprits: if the latter, certain penalties to be imposed upon them are previously appointed by a decree of the people; and the judges select that which they deem most proportioned to the merits of the offender[4]. We may collect from the extant orations of Dinarchus[5], that this was the order in which both the above cause relating to the briberies of Harpalus, and all others of a similar nature, were conducted. But it sometimes happened, particularly in the more turbulent times of the republic, when the resentment of the prevailing faction was bent on the destruction of some adversary, that the people voted in the assembly upon the life of their fellow-citizens, without appointing either inquisitors (*ζητηταὶ*) or accusers (*συνήγοροι*), and in defiance of all order in the trial, and all legitimate methods of proceeding. They took, in short, the alleged crime for granted; and as if every one knew that it had been committed, and must be punished, they appeared to think that all further investigation was superfluous, and condemnation alone required. Trials therefore of this description, if trials they could be called, were all irregular and illegal. [226] Thus after the defeat of the

[3] Ibid. p. 96. 34. That there were ten, he shows in Aristogit. p. 105. 37; and that this custom of accusers being publicly nominated was regular and legitimate, in Demosth. p. 97. 28.

[4] Id. in Philocl. p. 109. 5. *οὐδὲ τὰς ἀποφάσεις οἶμαι νῦν κρίνεσθαι, πότερον ἀληθεῖς εἰσὶν ἢ ψευδεῖς—ἀλλὰ περὶ μὲν τῆς τιμωρίας ὑμᾶς δεῖ τῆς ἐν τῷ ψηφίσματι γεγραμμένης δικάσαι νῦν, πότερα δεῖ χρημάτων τιμῆσαι τῷ τηλικαῦτα ἠδικηκότι τὴν πόλιν, ἢ θανάτῳ ζημιώσαντας—ἢ δημεῦσαι τὴν οὐσίαν.*

[5] The trial for the murder of Phrynicus, which Lycurgus tells us was held by the people, was an extraordinary one. In Leocrat. p. 164: *Φρυνίχου ἀποσφαγέντος νύκτωρ, παρὰ τὴν κρήνην τὴν ἐν τοῖς οἰσυίοις ὑπὸ Ἀπολλοδώρου καὶ Θρασυβούλου, καὶ τούτων ληφθέντων καὶ εἰς τὸ δεσμωτήριον ἀποτεθέντων ὑπὸ τῶν τοῦ Φρυνίχου φίλων, αἰσθανόμενος ὁ δῆμος τὸ γεγονὸς τούς τε εἰρχθέντας ἐξῆγε καὶ βασάνων γενομένων ἀνέκρινε, καὶ ζητῶν τὸ πρᾶγμα εὗρε τὸν μὲν Φρύνιχον προδίδοντα τὴν πόλιν, τοὺς δ' ἀποκτείναντας αὐτὸν ἀδίκως εἰρχθέντας· καὶ ψηφίζεται ὁ δῆμος Κριτίου εἰπόντος τὸν μὲν νεκρὸν κρίνειν προδοσίας, κἂν δόξῃ προδότης ὢν ἐν τῇ χώρᾳ τεθάφθαι, τά τε ὀστᾶ αὐτοῦ ἀνορύξαι καὶ ἐξορίσαι ἐξω τῆς Ἀττικῆς.* Compare also Lysias, in Agorat. p. 136. 20.

Athenians by Antipater at Cranon, when news was brought that the victorious army was approaching the city, and nothing but consternation prevailed in the state, the adversaries of Demosthenes having at last met with a convenient opportunity of effecting his ruin, procured, by the instrumentality of the orator Demades, the sentence of capital punishment to be issued against him and some of his party in the state. The people, imagining that the resentment of the conqueror would be satiated by putting to death the authors of the war, and (so to speak) that sufficient atonement would be made by their blood, condemned to death the party accused, who did not appear at the trial; for, anticipating the result, they had previously made their escape, but were soon arrested and put to death by Antipater[6]. In a manner closely resembling the last, Phocion was condemned by the people about four years afterwards. For when, after the death of Antipater, Polysperchon succeeded to the supremacy, and promised the Athenians and the rest of the Grecian states, as an inducement to leave the party of Cassander, the restoration of their liberty, which had been wrested from them by Antipater; the leaders of the popular faction endeavoured by every means in their power to criminate and vilify in the eyes of the people, the sturdy aristocrat Phocion, whom they had long hated and earnestly desired to ruin[7]. Phocion, therefore, alarmed lest the odium which he knew was secretly progressing against him, should break out into open violence, left the city, and joined Polysperchon, then resident in Phocis, choosing rather to trust to him than expose himself to the fury and infatuation of his countrymen. In the meanwhile, a decree was carried at the motion of Archestratus, that the people should send an embassy to Polysperchon, for the purpose of accusing Phocion in the

[6] See Plutarch, Demosth. chap. xxviii. xxix. Phoc. chap. xxvi.

[7] Plutarch, Phoc. chap. xxxiii. Ἀγνωνίδης ὁ ῥήτωρ εὐθὺς ἐπεφύετο τοῖς περὶ τὸν Φωκίωνα καὶ κατηγόρει προδοσίας. These words must not be understood of the regular impeachments by γραφὴ or εἰσαγγελία.

name of the state. Polysperchon accordingly permitted the people to hold a trial upon him: [227] in consequence of which he was taken into custody and brought back to Athens, under plea of undergoing his trial, but in reality for the purpose of having summary condemnation passed upon him. Upon his arrival, an assembly was convened in a tumultuous and irregular manner, to which access was granted even to slaves and foreigners. When Phocion appeared before them, the shouts and execrations of the rabble multitude rendered all attempts to make a defence useless. An orator named Agnonides moved that the votes of the people should be taken upon the question of his guilt; and that if it appeared manifest, he should be capitally condemned. The people carry the motion, and the unfortunate culprit is condemned and put to death. The whole of the transaction was utterly irregular and illegal[8].

CHAPTER V.

On προβολὴ, or Complaint to the People: and on ἐπαγγελία, on the Denouncement of an Accusation.

The action called προβολὴ is of an entirely different nature from the accusations and impeachments of which we have hitherto spoken. The object of the individual who instituted it, was not to induce the people to take cognizance of his case in the capacity of judges, or even to request that they would give orders for holding a trial, nominate accusers, and specify in a decree by what proceeding and by how many judges the cause should be tried; but merely to obtain the previous judgment of

[8] Except, perhaps, in this one respect, that the people voted as usual, first on the law of Agnonides, and secondly on the guilt of Phocion. It is difficult to comprehend what other points in the proceeding were *confecta*, which deserved the epithet *legitima*, bestowed on them by Nepos, Vit. Phoc. chap. 4. At all events it does not appear from the narrative of Plutarch, Phoc. 33-5.

the people on the guilt of the offender, in order that with this previous assurance in the justice of his cause, he might bring it for trial as it were by public sanction and authority, [228] before competent judges, to whom the cognizance of it properly belonged in accordance with the ancient laws, and who were not nominated for the particular occasion by a decree of the people. Whoever, then, instituted this action, was said *προβάλλεσθαι*; which properly signifies nothing more than *to propose something to the people*, for their discussion, that is, and decision. Demosthenes[1], therefore, by the words *προὐβαλόμην ἀδικεῖν τουτονὶ περὶ τὴν ἑορτήν*, means to imply, "I proposed or suggested to the people in assembly that this man had been guilty of an offence, in order that they might, after due deliberation, return a preliminary verdict whether they thought him guilty or innocent." And hence originated another expression, *προβάλλεσθαί τινα*[2], without an infinitive, "to bring a person before the notice of the people" for their opinion upon him; or, in other words, to impeach him: through which medium the term *προβολὴ* derived its signification of *an impeachment*[3]; [229] though not to be confounded with *εἰσαγ-*

[1] In Mid. p. 514.

[2] Ibid. p. 571. *περὶ τὰ μυστήρια ἀδικεῖν Εὐάνδρον κατεχειροτόνησεν ὁ δῆμος, προβαλλομένου αὐτὸν Μενίππου.*

[3] The Grammarians in many places explain *προβολὴ* to be *κλῆσις εἰς δίκην*, or *γραφή*, (see Pollux, viii. 46. Suid. in v.) which is false: for a *κλῆσις* or *γραφὴ* follows *προβολὴ*, but is by no means identical with it. The Rhetoricians call that part of an oration *προβολὴ*, which introduces and lays before the judges the subject of it, and informs them upon what their votes are to be given. Thus *προβολὴ* is well explained by Sopater ad Hermogen. p. 199. Ald. *προβολή ἐστι τῶν εἰρημένων ἐν τῇ καταστάσει σύντομος ἀπόφασις· εἴρηται δὲ προβολὴ διὰ τὸ τὴν πρότασιν ἔχειν τοῦ πράγματος καὶ ὥσπερ προτείνειν τοῖς δικάσταις, περὶ οὗ αὐτοὺς δεῖ κρῖναι.* It is from this sense of *proposing* or *putting forward*, that *προβάλλεσθαι* comes to be applied to candidates for any office being presented to the people, as in Demosth. de Coron. p. 277. *προβληθεὶς πυλαγόρας οὗτος.* Hence also *προβολὴ* occurs in Plato in the same sense, de Legg. p. 765. B. *καὶ τὴν προβολὴν δὴ τὸν αἱρούμενον ἐκ τῶν ἐμπείρων ποιεῖσθαι*—which passage Ruhnken quotes, though not appositely, on Timæus, p. 224. For Timæus is there speaking of the other kind of *προβολή*, viz. the appeal to the people, of which I am not aware that any men-

γελία or μήνυσις, as the preceding observations will shew.

The action of προβολὴ was chiefly had recourse to in cases of misdemeanour or injustice in magistrates. Ἔθος ἦν (says Harpocration) Ἀθήνησι κατὰ τῶν ἀρχόντων προβολὰς ἐν τῷ δήμῳ τίθεσθαι[4]. It appears, in fact, that no magistrate could be accused of misconduct in the discharge of his office, either against the state or a private individual, except by permission of the people[5]. But in heavier crimes, intimately affecting the state, and apparently deserving extraordinary proceedings, an impeachment by εἰσαγγελία was brought before the senate or the people, as we have already observed. If this impeachment was accepted by them, they either assumed to themselves the privilege of passing judgment upon the offender, [230] or deputed it to the Heliæa by virtue of a previous bill (προβούλευμα) or a decree (ψήφισμα), and nominated accusers. And by the very circumstance of receiving the impeachment or deputing the cognizance of the affair to the court, they must be considered as having given permission to the plaintiff to prosecute the defendant. But in minor offences, when the plaintiff either would not or could not institute an action of εἰσαγγελία, it was necessary for him to appear before the assembly, to propose the subject to the people, and to ask them

tion is made in Plato, though he frequently applies both προβολὴ and προβάλλεσθαι to candidates, see de Legg. vi. 755. c. D. 756. A. (where for ἀντιβολὴν read ἀντιπροβολήν). Again, the people are said προβάλλεσθαί τινα when they appoint him a public accuser, and similarly a public accuser is προβεβλημένος ὑπὸ τοῦ δήμου. Plutarch, Pericl. c. 10. Demosth. c. 14. προβάλλεσθαι therefore in these passages means *to create*. But those are mistaken who suppose that the sense of *appealing to the people* is deduced from this signification, as Heyne appears to do, Opusc. Acad. tom. iv. p. 82. note h.

[4] In v. καταχειροτονία. Compare Lex. Rhet. in Bekker's Anecdot. I. p. 268.

[5] This, at least, appears highly probable, though I am unable to produce any direct testimony in proof of it. But we may observe that the Romans had a similar custom: vid. Sigon. de Judic. iii. cap. 5. extr.; and Heinecc. Antiq. Rom. iv. 18. 37. who has copied from him.

whether they were of opinion that such and such a magistrate had been deficient in his duty, and if they would allow him to commence an action against him on those grounds. If the people determined that he was apparently guilty, and that there was just reason for bringing him to trial, he was compelled to abdicate his office[6]. And thus the prosecutor was at full liberty [231] to accuse and institute further proceedings against him.

The grammarians inform us, that it was customary on the first assembly in every Prytany, which was called *κυρία*, to hold an *ἐπιχειροτονία* upon the conduct of the magistrates; that is, for the Archons to put the question to the people, Whether they were satisfied with the conduct of the present magistrates, or not? Those, we are told, who were approved by the people, continued in office; those who were objected to, were deposed[7]. The

[6] Here, again, I have nothing to rest upon but conjecture; for, as far as I can recollect, not one of the ancient writers expressly asserts this. Yet I think that my conjecture is in some degree confirmed by a passage in Æschines, from which it is evident that if any senator was accused of misconduct, he was first degraded from his post and afterwards tried. The passage to which I allude is in the oration against Timarchus, p. 128. seq. where the orator relates that one Pamphilus, of Acherdus, charged Timarchus, when a senator, of embezzlement, before the people in assembly. He then proceeds: *διδάξας δὴ ταῦτα, τί οὖν ἐστιν, ὦ Ἀθηναῖοι, ἔφη, ὅ συμβουλεύω ὑμῖν; ἐὰν μὲν ἡ βουλὴ καταγνοῦσα τουτονὶ ἀδικεῖν καὶ ἐκφυλλοφορήσασα δικαστηρίῳ παραδῷ, δότε τὴν δωρεὰν αὐτοῖς.* (On *ἐκφυλλοφορία* see Harpocrat. in v.) We may therefore reasonably infer that the custom which prevailed respecting the senators was likewise extended to the magistrates, not to mention that the contrary would appear scarcely credible. The words following in Æschines are erroneously explained by both the Scholiast and Taylor: *Μετὰ ταῦτα, ὡς ἐπανῆλθεν ἡ βουλὴ εἰς τὸ βουλευτήριον, ἐξεφυλλοφόρησε μὲν αὐτὸν, ἐν δὲ τῇ ψήφῳ κατεδέξατο.* The circumstances of the case were as follows:—Timarchus was at first expelled from the senate on account of Pamphilus' impeachment, but subsequently, when the trial was held by the senate, he was acquitted, and restored to his former rank. Had he been condemned, another *διαψήφισις* would have followed, to determine the penalty to be imposed upon him, and if the senate thought him deserving of a heavier fine than five hundred drachmæ, he would have been referred to the court of the Heliæa.

[7] See Harpocrat. in v. *κυρία ἐκκλησία*. Pollux, viii. 95. and 87. Suid. in eâd. v. *Ἐπιχειροτονία* occurs in this sense in the oration against Theocrin. p. 1330.

design of these *ἐπιχειροτονίαι* appears to have been, to afford any person who had grounds of complaint against a magistrate for misconduct in either a public or private capacity, an opportunity of laying them before the people by a *προβολὴ* on that particular occasion. And I conceive that the people could not vote upon the conduct of the magistrates, unless some individual took upon himself to accuse them and institute a *προβολή*: for an *ἐπιχειροτονία*[8] could have no place unless an accusation was laid against some magistrate on whom it might be held. It devolved upon the Archons [232] to bring to trial those who had been deposed[9], if the accuser desired to prosecute the affair still further—which however I imagine was not always the case, as he appears to have been generally satisfied with the ignominy accruing to the accused from his previous condemnation by the people.

We know from the testimony of Æschines, Isocrates, and others, that complaint could be made to the people, by a *προβολὴ*, against Sycophants also[1]. *Τοῖς μὲν γὰρ*

[8] An example of these *ἐπιχειροτονίαι* is furnished by the author of the oration against Theocrines, p. 1330. *διὰ τὴν τούτου πονηρίαν (τοῦ Θεοκρίνους) ἀδελφὸς αὐτοῦ θεσμοθετῶν, καὶ τούτῳ χρώμενος συμβούλῳ, τοιοῦτος ἔδοξε παρ' ὑμῖν εἶναι, ὥστ' οὐ μόνον αὐτὸς ἀπεχειροτονήθη, τῶν ἐπιχειροτονιῶν οὐσῶν, ἀλλὰ καὶ τὴν ἀρχὴν ἅπασαν* (i. e. the whole college of Archons) *ἐποίησε· καὶ εἰ μὴ δεομένων αὐτῶν καὶ ἱκετευόντων καὶ λεγόντων, ὡς οὐκ ἔτι πρόσεισι Θεοκρίνης πρὸς τὴν ἀρχὴν, ἐπείσθητε ὑμεῖς καὶ πάλιν ἀπέδοτε τοὺς στεφάνους αὐτοῖς, πάντων ἂν αἴσχιστα οἱ συνάρχοντες ἐπεπόνθεισαν.* Theocrines, having been appointed an assessor by his brother (on the *πάρεδροι* see Taylor in loc.), had so misled both him and his colleagues, that upon the usual *ἐπιχειροτονίαι* being held in the assembly, complaint was raised against them, and the people deprived them of their office, in which they were only reinstated by engaging never again to follow the counsels of Theocrines.

[9] Harpocration, in v. *καταχειροτονία*, speaking of *προβολή*: *εἰ δέ τις καταχειροτονηθείη, οὕτως εἰσήγετο εἰς τὸ δικαστήριον.* Pollux, viii. 87. *Κοινῇ οἱ ἐννέα ἄρχοντες ἔχουσιν ἐξουσίαν, καθ' ἑκάστην πρυτανείαν ἐπερωτᾷν τὸν δῆμον εἰ δοκεῖ καλῶς ἄρχειν ἕκαστος· τὸν δ' ἀποχειροτονηθέντα κρίνουσι.* (i. e. *εἰσάγουσι*, preside at the trial.)

[1] Æschin. de Fals. leg. p. 311. R. *τῶν δὲ συκοφαντῶν ὡς κακούργων δημοσίᾳ προβολὰς ποιούμεθα.* Isocrat. de Permutat. p. 802. Cf. Harpocrat. ut sup. Pollux. viii. 46. *προβολαὶ δὲ ἦσαν καὶ αἱ τῆς συκοφαντίας γραφαί. Λυσίας ἐν τῷ πρὸς Ἱπποκράτην αἰκίας.* The words which immediately precede are hopelessly corrupt: *προβολαὶ δὲ γίγνονται, τοῦ δήμου ψηφισαμένου καὶ τῶν*

μεγίστοις τῶν ἀδικημάτων (says Isocrates) ἐν ἑνὶ τῶν δικαστηρίων τὰς κρίσεις ἐποιήσαντο (οἱ πρόγονοι)· κατὰ δὲ τούτων γραφὰς μὲν πρὸς τοὺς Θεσμοθέτας, εἰσαγγελίας δ' [233] εἰς τὴν βουλὴν, προβολὰς δ' ἐν τῷ δήμῳ. He therefore states that there were three procedures by which a sycophant could be prosecuted; γραφὴ, εἰσαγγελία, and προβολή. We may add a fourth, φάσις, from Pollux[2]. This example also shews the truth of Demosthenes' statement, that Solon appointed several ways of proceeding against each particular crime, in order that the prosecutor might have the option of choosing that which was best adapted to the circumstances of the case or to his own convenience. I am inclined to suppose that recourse was chiefly had to the action of προβολὴ, when any one had to deal with a sycophant, who, from his eloquence or favour with the Heliasts, threatened to be a dangerous adversary unless the previous sentence of the people could be obtained against him. For, although the Heliasts were by no means bound to acquiesce in and confirm that sentence, yet the concurrent opinion of the whole people could not fail to have considerable weight in supporting and seconding the cause of the plaintiff. Without doubt those who had induced the people, by their calumnies and false charges, to consent to the judicial murder of the ten

εὐνουστάτων τῇ πόλει, ὡς Λυσίας ἐν τῷ κατὰ Θεοσδοτίδου, περὶ ἀμφοῖν. What! are we to understand that a vote was given to those only who were well affected to the state? And what is the meaning of περὶ ἀμφοῖν? I once thought that we should write κατὰ τῶν ἐνισταμένων τῇ πόλει—καὶ περὶ τῶν ἀρχῶν: "against the enemies of the state and about the magistrates." Now, however, I am more inclined to imagine that the passage was taken from the oration of Lysias against Theosdotides, but mutilated at the end, either by the fault of the scribe or by some accident. Were the orator describing any particular cause, he might naturally say that all who were well-affected to the state gave their votes on the occasion; but the observation is absurd in defining προβολή.

[2] VIII. 47. We have already spoken of the φάσις and εἰσαγγελία of sycophants, in chap. 3. I will add a passage in Dinarchus which seems to allude to this, and which had escaped me before. It is in the oration in Demosth. p. 96. 38. although he improperly applies the term προδότην where he should have said συκοφάντην.

most innocent generals, were afterwards accused of sycophancy[3]. The people, we are told, commanded that actions of προβολὴ should be instituted against these persons—ἐψηφίσαντο, οἵτινες τὸν δῆμον ἐξηπάτησαν, προβολὰς αὐτῶν εἶναι[4]. But it seems to have been an irregular proceeding for the people [234] to depute the office of bringing this accusation to certain individuals, without waiting till some one should bring it of his own accord. The fact was, it was apprehended that the party might in the interim escape, or induce their accusers by bribery or other means to withdraw their intended impeachment, and thus come off with impunity.

Those also appear to have been liable to a προβολὴ, who privately worked any of the silver mines belonging to the state[5], or were guilty of embezzling any portion of the public revenues. Indeed the words of Pollux appear to imply that this action could be brought against *all* who had shown themselves to be disaffected towards the state[6]; and this is not improbable.

But the most notorious and celebrated kind of προβολὴ is that by which complaint was laid before the people of some misconduct or outrage committed during the festivals of the Eleusinia, the Dionysia, and others. On this subject two laws are preserved, though not entire, by Demosthenes; which, as they furnish an important illustration of the point in question, I shall subjoin at length. The first is as follows:—

Τοὺς πρυτάνεις ποιεῖν ἐκκλησίαν ἐν Διονύσου τῇ ὑστεραίᾳ τῶν Πανδίων. ἐν δὲ ταύτῃ χρηματίζειν πρῶτον μὲν

[3] Taylor concurs in this opinion, Præfat. ad Demosth. orat. in Mid. p. 563. in Reiske's Appar. Crit. tom. 1.

[4] Xenoph. Hellen. i. 7. §. 39. It appears that we must refer to προβολὴ the words of Lysias respecting Agoratus (in Agorat. p. 135. 44): συλλήβδην γὰρ ὑμεῖς αὐτοῦ ἅπαντες καὶ ἐν τῷ δήμῳ καὶ ἐν τῷ δικαστηρίῳ συκοφαντίας κατέγνωτε: for this was the order in which προβολὴ was conducted, viz. the case was first referred to the people, and subsequently prosecuted in court.

[5] Taylor, Præf. ad Demosth. Mid. p. 563. from the [then] unpublished appendix to Harpocration.

[6] VIII. 46. προβολὴ δὲ ἡ κλῆσις εἰς δίκην κατὰ τῶν κακόνως πρὸς τὸν δῆμον διακειμένων.

περὶ ἱερῶν· ἔπειτα τὰς προβολὰς παραδιδότωσαν τὰς γεγενημένας ἕνεκα τῆς πομπῆς ἢ τῶν ἀγώνων ἐν τοῖς Διονυσίοις ὅσαι ἂν μὴ ἐκτετισμέναι ὦσιν.

The second runs thus:

Εὐήγορος εἶπεν· ὅταν ἡ πομπὴ ᾖ τῷ Διονύσῳ ἐν Πειραεῖ, καὶ οἱ κωμῳδοὶ καὶ οἱ τραγῳδοὶ, καὶ ἡ ἐπὶ [235] *Ληναίῳ πομπὴ καὶ οἱ τραγῳδοὶ καὶ οἱ κωμῳδοὶ, καὶ τοῖς ἐν ἄστει Διονυσίοις ἡ πομπὴ καὶ οἱ παῖδες καὶ ὁ κῶμος καὶ οἱ κωμῳδοὶ καὶ οἱ τραγῳδοὶ, καὶ Θαργηλίων τῇ πομπῇ καὶ τῷ ἀγῶνι, μήτι ἐξεῖναι μήτε ἐνεχυράσαι μήτε λαμβάνειν ἕτερον ἑτέρου, μηδὲ τῶν ὑπερημέρων, ἐν ταύταις ταῖς ἡμέραις. ἐὰν δέ τις τούτων τι παραβαίνῃ, ὑπόδικος ἔστω τῷ παθόντι καὶ προβολαὶ αὐτοῦ ἔστωσαν ἐν τῇ ἐκκλησίᾳ τῇ ἐν Διονύσου, ὡς ἀδικοῦντος, καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται*[7].

Now in the former of these laws the Prytanes are enjoined to hold an assembly in the temple of Bacchus, on the day after the Pandia, i. e. on the fifteenth of Elaphebolion[8], for the purpose first of conferring with the people *περὶ ἱερῶν*, that is, upon the affairs which came under the superintendence of the Archon[9], and in the next place of proposing to them any *προβολαὶ* which might have been instituted for misdemeanours committed at the Dionysia, which were held on the twelfth day of the same month. The latter law commands that the *προβολαὶ* for offences at the rural Dionysia, the Lenæa, and the Thargelia, be presented to the people in the theatre of Bacchus. We learn from another passage in Demosthenes, as well as from the statements of the grammarians[1], that the same provision was extended also to the Eleusinia, or Mys-

[7] Demosth. in Mid. p. 517. 518. On the feasts which are mentioned in these laws, see Taylor, p. 574. and Spalding, in his preface to the above oration, p. 13. seq. together with his Commentary on the Dionysia, in Comment. Acad. Reg. Berolin. 1804—11. On the Lenæa, consult Boeckh, Publ. Œcon. ii. p. 249. and on the Thargelia, Corsini, Fast. Att. Diss. xiii.

[8] According to Corsini, ut sup.

[9] See Spalding, in loc. p. 7.

[1] Demosth. in Mid. p. 571. *ἔστι δὲ ὁ αὐτὸς νόμος τῷδε τῷ περὶ τῶν Διονυσίων ὁ περὶ τῶν μυστηρίων.* Compare the Lexicon Rhetoricum, in Bekker's Anecdota, l. l. and p. 288.

teries: and there is no reason to doubt that it equally applied to all of the greater festivals [236] and to the ceremonies connected with the various games and processions. This inference is not a little confirmed by what Pollux apparently intimates by the following general statement: *ἐγίγνοντο δὲ (προβολαὶ) περὶ τῶν ἐξυβρισάντων ἢ ἀδικησάντων ἢ ἀσεβησάντων περὶ τὰς ἑορτάς.* We know that these laws were not passed upon all the festivals on the same occasion, from the assertion of Demosthenes that the law relating to the Eleusinia was of greater antiquity than that relating to the Dionysia[2]. All of them appear to have been enacted some time after the age of Solon, and perhaps not one is earlier than the Peloponnesian war[3], or the archonship of Euclides.

Provision was made by these laws, that no one during a festival or *holiday*, which the Greeks called *ἱερομηνία*, should, on any grounds or pretext whatever, commit an injury against, or assault upon, any one who was taking part in the ceremonies of the occasion, whether spectator, citizen, foreigner, slave or free[4]; and thus they were by

[2] Orat. in Mid. p. 571. *κἀκεῖνος (ὁ περὶ τῶν Διονυσίων νόμος) ὕστερος τούτου ἐτέθη (τοῦ περὶ τῶν μυστηρίων).*

[3] That those relative to the scenic entertainments were enacted subsequently to the age of Solon is evident from the case itself. See also Demosth. p. 525. The same orator affirms (p. 562.) that the law respecting the Dionysia was not in existence in the time of Alcibiades. *Ἀλκιβιάδης Ταυρέαν ἐπάταξε χορηγοῦντα ἐπὶ κόρρης· ἔστω ταῦτα, ἀλλὰ χορηγῶν γε χορηγοῦντα τοῦτ' ἐποίησε, οὔπω τόνδε τὸν νόμον παραβαίνων· οὐ γὰρ ἔκειτό πω.* (On this story, see Andocid. in Alcibiad. p. 21. 35. Plutarch, vit. Alcib. cap. 16.) A law of Solon is cited by Andocides, de Myster. p. 15. 8. which orders that the senate be held on the day after the Mysteries in the Eleusinium (a temple not at Eleusis, but in the city); and it is clear from the context of the oration, that the transactions and events of the festival were discussed in that meeting. No mention however is made of any assembly.

[4] Demosth. in Mid. p. 525. The slaves are not indeed expressly specified, yet I have no doubt that these laws extended to them also, since the ordinary action for assault (*ὕβρις*) could be instituted for injuring a slave as well as a free citizen: see Demosth. p. 529. and also p. 571. Id. adv. Timocrat. p. 709. *ἁπάντων ὑμῶν ἀγόντων ἱερομηνίαν, καὶ νόμου κειμένου, μήτ' ἰδίᾳ μήτε κοινῇ μηδὲν ἀλλήλους ἀδικεῖν ἐν τούτῳ τῷ χρόνῳ.* The orator is speaking of the feast of Saturn, though it may be questioned whether *προβολαὶ* could be instituted for injuries in this case also.

no means limited to the object of preserving inviolable the persons of those who were actually engaged in performing or superintending those ceremonies. [237] Moreover, no one could, during their continuance, take pledges from a debtor, nor claim any of his property even from those who had not paid the penalty imposed upon them by law within the appointed time[5]. As, therefore, it was in a manner stipulated by the *jus gentium* among the Grecian states, that all hostilities should be suspended and universal peace prevail during the celebration of those great national festivities, the Olympian, Isthmian, Nemean, and Pythian games[6]; so, by the civil institutions of the Athenians, all outrages and quarrels between private persons, during the celebration of their periodical solemnities, were held sacrilegious and impious. And so religiously did they observe and enforce these laws, that Menander the Thespian, who had arrested, for non-payment of a debt, one Menippus, a Carian, during the festival of the Eleusinia, was condemned by the people, and would have been sentenced to death by the judges, had not the prosecutor interceded in his behalf. Another person, an assessor (*πάρεδρος*) to his son who was Archon, was condemned for having struck and forcibly ejected from the theatre, during the Dionysia, some one who had taken previous possession of a seat there. [238] Again, one Ctesicles was put to death for having struck an enemy of his with a whip which he had brought in his hand, while in a state of intoxication, to a procession[7]. And the story told by

[5] The above prohibitions are included in the law of Euegorus, concerning the great and the rural Dionysia, the Lenæa and the Thargelia. But those acts of violence which I before enumerated appear to have been forbidden by more ancient laws, as we may infer from the concluding words of that which I have cited—*προβολαὶ αὐτῶν ἔστωσαν—καθὰ περὶ τῶν ἄλλων τῶν ἀδικούντων γέγραπται.*

[6] See Plutarch, Arat. cap. 28. Xenoph. Hellen. iv. 5. Schol. ad Æschin. or. de Fals. leg. p. 197. Thucyd. v. 49. And to this also the *σπονδαὶ μυστηριωτίδες* refer, in Æschin. p. 302. We shall revert to this institution in a more suitable place.

[7] Demosth. in Mid. p. 571—2.

Dinarchus is undoubtedly a parallel instance; viz. That Themistius of Aphidna was punished with death for an assault upon a female harper of Rhodes during the celebration of the Eleusinia[8].

For all such outrages, then, and misdemeanours, complaint was made to the people through the medium of the Prytanes[9]. For those magistrates are enjoined by the law quoted above, *τὰς προβολὰς παραδιδόναι τὰς γεγενημένας ὅσαι ἂν μὴ ἐκτετισμέναι ὦσιν.* To them accordingly the prosecutor had first to apply, and give in his action of *προβολὴ* (committed, without doubt, to writing), in order that they might lay it before the people, unless satisfaction had been previously given to the prosecutor by the offender. In the assembly, the plaintiff brought the defendant into the presence of the people[1], and after the *προβολὴ* had been produced by the Prytanes, each party pleaded his own cause. The people were then [239] asked, by the crier, first, whether they thought the case of the accused was such as justified a *προβολή*? Those who thought that it did, then held up their hands, and this was called *καταχειροτονία.* They were next asked, whether it did *not* appear to them to justify a *προβολή*? and in this case hands were likewise held up by the party who were of a contrary opinion to the rest. This was *ἀποχειροτονία*, and the decision of the majority prevailed[2]. The former, *καταχειροτονία*,

[8] Dinarch. in Demosth. p. 93. 10.

[9] Complaints of the misconduct of magistrates were, as we have already observed, generally made in the first assembly of the Prytany; those of outrages during the festivals, in the next assembly afterwards; and those brought against sycophants, upon the first opportunity.

[1] Lexic. Rhetor. Bekk. p. 288. *προβολὴ καὶ προβάλλεσθαι, τὸ παράγειν εἰς τὴν ἐκκλησίαν τὸν βουλόμενον καὶ ἀποφαίνειν ὡς ἠδίκησεν.* In this sense Taylor (p. 564.) has called *προβολὴ provocatio ad populum*, contrary to the legitimate use of the word amonst the Romans. There were no real *provocationes*, *ἐφέσεις*, to the people at Athens, and Heyne's observations about them (Op. Acad. p. 81. not. e.) have arisen from a false interpretation of a passage in Plutarch, vit. Sol. chap. 18.

[2] See Petit, Leg. Att. p. 307. who would alter, without reason, *ἀποχειροτονία* in Suidas into *ἐπιχειροτονία*, just because he happened to have read in

was intended to give confidence and assurance to a humble and poor individual, who wished to prosecute some powerful or wealthy adversary. And this confidence was effectually afforded by the previous decision of the people in his favour, and by a sort of tacit acknowledgment thereby made that they considered the offence in some measure to affect the whole state. For it must be observed, that no assessment of the injury attended the προβολή—no punishment was imposed by the people on the offender: the trial was a proceeding subsequent to the previous verdict, and was committed to the court of the Heliæa, through the medium of one of the Archons[3], precisely similarly to other public causes[4]. The action was an ἀγὼν [240] τιμητός[5]; although it appears that death was generally inflicted upon conviction.

But we read, that when any one intended to impeach another on a public charge, he not unfrequently signified his intention to his adversary in the assembly and in the hearing of all the people. The object of this public warning was not to obtain the votes and judgment of the people upon the case, but that all the citizens might be witnesses of his design, and either shew favour to him,

Pollux ἀποχειροτονεῖν in another sense. He did not perceive that ἀποχειροτονεῖν with an accusative and with a genitive are two different things,—as much so as ἀποψηφίζεσθαί τινα and τινός. Compare the Schol. Bavar. ad Demosth. in Mid. p. 82. R.

[3] The Thesmothetæ alone are mentioned by Pollux, viii. 87. but without doubt different causes belonged to different Archons.

[4] See Matthiæ, de Judic. Ath. P. 2. p. 238. seq. although I confess I am unable to discover the reason why the learned author should have referred to this subject the cause of Timagoras in Demosth. p. 350. See supr. chap. iii. p. 185. How false and erroneous a view of this kind of trials Heyne has entertained, may be seen from his own words, Opusc. Acad. iv. p. 81. "Demosthenes, qui chorum instruxerat, a Midia, æmulo in orchestra pugnis cæsus, accusaverat Midiam ad populum: damnatur ἀσεβείας Midias; at ille (Midias) alteram actionem instituit, ἀγῶνα τῆς ὑποτιμήσεως, (which observation, by the way, is Libanius', in the argument to the oration) non ἀσεβείας sed ὕβρεως se reum esse contendens; res rejecta ad dicasteria; in altero hoc judicio habita oratio in Midiam."—the very commencement of which Heyne cannot have read with attention.

[5] Demosth. Mid. 1523. init. Compare p. 571. fin.

or raise enmity and suspicion against his adversary. This was *ἐπαγγέλλειν*, and the denouncement itself *ἐπαγγελία*, which some have erroneously confounded with *εἰσαγγελία*, as has already been remarked by others[6]. Properly speaking, *ἐπαγγελία* was peculiarly applied to the threat of an action denounced against an orator, who, on account of a dissolute and disreputable life, was disqualified by the law from speaking in the assemblies, but still persisted, in defiance of it, to usurp this privilege. This denouncement was said to be made *πρὸς δοκιμασίαν τοῦ βίου*; that is, with a view of compelling him to give an account of his life and conduct to the people, in order that, if he was pronounced guilty, he might be punished with infamy and prohibited from the Agora and assembly[7]. It was by this procedure that [241] Timarchus was brought to trial by Æschines, and upon conviction declared infamous. That the denouncement in this case was made before the people in assembly, is proved by the very words of Æschines: *τὰ δὲ ἐν αὐτῇ τῇ ἐκκλησίᾳ γενόμενα, ὅτε ἐγὼ τὴν ἐπαγγελίαν ταύτην Τιμάρχῳ ἐπήγγειλα, ταῦθ' ὑμᾶς ἀναμνῆσαι βούλομαι*[8]. And there appears to have been

[6] See Ruhnken on Timæus, p. 98. On the various significations of *ἐπαγγελία*, see Taylor ad Demosth. de Fals. leg. p. 345. seq. in the Apparat. Crit. tom. i.

[7] I have transcribed the law itself concerning this *ἐπαγγελία*, (preserved by Æschin. adv. Timarch. p. 54—6.) in Book I. chap. 10. p. 115. It is from the oration against Timarchus that all the grammarians, Harpocration, in v., Pollux viii. 43., Suidas, in v., and others, have derived their definition of *ἐπαγγελία*. But that of Harpocration and Suidas does not appear to distinguish with sufficient accuracy between *ἐπαγγελία* and *ἔνδειξις*. For *ἐνδείκνυσθαι* is applied also *τῷ ἀντιποιουμένῳ πράξεων ἢ τόπων ἀπηγορευμένων τοῖς νόμοις, οἷον τῷ ἡταιρηκότι τῆς ἀγορᾶς καὶ τοῦ λέγειν.* There is, however, a wide difference between the two. *Ἐπαγγελία* is when one individual threatens an accusation against another, who has not yet been convicted of the crimes laid to his charge, but is then for the first time impeached. *Ἔνδειξις*, on the contrary, is an information laid against such as, having been already condemned and made infamous, nevertheless persist in frequenting the Agora and assemblies.

[8] Or. adv. Timarch. p. 104. Reiske is mistaken in asserting that *ἐπαγγελία* is here the same as *δοκιμασία*. *Ἐπαγγελίαν ἐπαγγέλλειν* is a similar expression to *μάχην μάχεσθαι, γραφὴν γράφεσθαι*, &c. &c. But *δοκιμασία* is

great reason in instituting such a proceeding against this particular class of offenders, the orators; because it was a most effectual method of exposing to the view of the people the abandoned and vicious character of their counsellors and ministers, and of ensuring to the latter the odium and contempt which their conduct so well merited. And in a similar manner the magistrates, whether elected by lot or by vote, appear to have been sometimes threatened with a scrutiny (*δοκιμασία*), to ascertain [242] whether they were qualified for and adequate to the office to which they had been nominated[9].

I imagine, however, that recourse was occasionally had to *ἐπαγγελία* in the case of other public crimes, as, for instance, that of proposing unconstitutional measures. Libanius confirms this opinion, who, in speaking of the cause of Ctesiphon, observes; *Αἰσχίνης ἐχθρὸς ὢν τοῦ Δημοσθένους, ἀγῶνα παρανόμων ἐπήγγειλε Κτησιφῶντι*[1]. In fact, the oath called *ὑπωμοσία*, of which we have before spoken, was only a kind of *ἐπαγγελία*, or denouncement of an action on oath, made in the assembly and before all the people, although perhaps the latter name was less frequently applied to it. Similarly also an accusation for *ξενία* was sometimes publicly threatened in assembly, as we are informed by Demosthenes: *Ἴστε γὰρ τοῦτον* (speaking of Timotheus), *ἐν τῷ δήμῳ ὀμόσαντα καὶ ἐπαράμενον αὑτῷ ἐξώλειαν, εἰ μὴ γράψαιτο Ἰφικράτην ξενίας*[2]. It was usual, therefore, to confirm these de-

the actual trial, as in Æschines, p. 28. *ἐπήγγειλα αὐτῷ τὴν δοκιμασίαν ταυτηνί.* and p. 56. *δοκιμασίαν ἐπαγγειλάτω ὁ βουλόμενος.* Ἐπαγγελία is the threat of an action, which the trial, *δοκιμασία*, follows. There is reason, therefore, in the statement of Ulpian, on Demosth. adv. Androt. p. 388. 43. that *ἐπαγγελία* was *δίκη πρὸς δοκιμασίαν τοῦ βίου*, though he does not use the word *δίκη* correctly.

[9] Pollux, viii. 44. *Δοκιμασία δὲ τοῖς ἄρχουσιν ἐπηγγέλλετο, καὶ τοῖς κληρωτοῖς καὶ τοῖς αἱρετοῖς, εἴτ' ἐπιτήδειοί εἰσιν ἄρχειν εἴτε μή.* It does not however necessarily follow that *all ἐπαγγελίαι* were made in assembly.

[1] Argum. ad Demosth. de Coron. p. 221.

[2] Orat. in Timoth. p. 1204. Ἐπαρᾶσθαι *τὴν ἐξώλειαν αὑτῷ*, to imprecate destruction upon one's own head, was one of the most common formulæ in

nouncements by an oath; and if any one failed to observe it, and thus broke the faith he had plighted to the people, he could be impeached by εἰσαγγελία[3]. The accusations themselves, which had been threatened in the manner described above [243], had to be brought before one of the college of Archons, the Eponymus or a Thesmotheta, according to the circumstances of the case[4]. The rest of the proceedings were conducted in the ordinary manner.

CHAPTER VI.

On Ostracism.

It appears to me that Ostracism may be comprehended without impropriety under the subject of public trials; for though it was not, strictly speaking, identical with the latter, yet there are some respects in which it closely resembled them. There was not, indeed, in ostracism, any formal accusation or defence; nor were there any of the Heliastic judges to give secret votes on the occasion[1]: the banishment adjudged to those condemned being, as Plutarch well observes[2], not designed as a punishment for any crime, but as a check upon, and (as it were) a correction of, such an excess of wealth or power as appeared

swearing. See Æschin. adv. Timarch. p. 131. Demosth. adv. Aristocrat. p. 642. Antiphon de cæd. Herod. p. 130. 33. and others.

[3] Demosth. in Timoth. ut sup. Dinarch. in Philocl. p. 108. 44. See Petit, Leg. Att. p. 527. seqq.

[4] For γραφὴ παρανόμων was brought before either the Eponymus or the Thesmothetæ: see Wolf, ad Demosth. Leptin. p. cxxxx. ξενίας γραφὴ before the Thesmothetæ: Pollux viii. 88. ἑταιρήσεως γραφὴ, and all which related to the δοκιμασία τοῦ βίου, likewise before the Thesmothetæ: see ibid. and Demosth. adv. Androt. p. 600.

[1] Andocid. in Alcibiad. p. 29. 15. Steph. Οὔτε κατηγορίας γενομένης, οὔτε ἀπολογίας ἀποδοθείσης, οὔτε διαψηφισαμένων κρύβδην, τὸν ὀστρακισθέντα τοσοῦτον χρόνον δεῖ στερηθῆναι τῆς πόλεως.

[2] Plutarch, vit. Themistocl. cap. 22. Aristid. cap. 7. with which compare Alcibiad. cap. 13. Nic. cap. 11.

inconsistent with the security of the commonwealth. Since, however, it was necessary to obtain the permission of the people in order to institute this proceeding upon any of the citizens, notice had to be given and application made to the former some time previously, for the purpose of certifying to them [244] the reason for holding it, and of specifying the names of those citizens whose excessive wealth rendered their removal from the state advisable. And those who were thus warned of the impending danger of banishment, began now to exert themselves with activity, in removing the jealous suspicions which they perceived the people to entertain against them; as we find to have been done by the author of the oration against Alcibiades, usually attributed to Andocides, though sometimes to Phæax. This individual, whoever he might have been, while he endeavours to defend and clear himself, at the same time criminates Alcibiades, and contends that he is deserving of banishment; while it is observable that his manner of speaking seems to imply that Alcibiades will plead his own cause afterwards[3]. Here, then, we see a close resemblance to an ordinary accusation and defence; and upon the whole, ostracism, as I have remarked, is not materially different in principle from a common trial.

The order and manner in which the affair was transacted, has now been explained with sufficient accuracy by several writers, and is consequently well known[4]: for which reason I shall only give a brief sketch of the principal facts connected with it. If, then, the people determined to institute ostracism[5], and to chastise with a whip

[3] Andocid. ut sup. p. 32. 24. Ἡγοῦμαι δ' αὐτὸν πρὸς τοῦτο μὲν οὐδὲν ἀντερεῖν, λέξειν δὲ περὶ τῆς νίκης Ὀλυμπιάσι, καὶ περὶ πάντων μᾶλλον ἢ τῶν κατηγορηθέντων ἀπολογήσεσθαι.

[4] Some of the writers upon ostracism are enumerated by Fabricius, Bibliogr. Antiq. cap. xv. §. 16. p. 754. to whom several more might be added, as Laurent. Normannus, Diss. de Ostrac. Upsal. 1692. Steph. Menochius, Tratteniment. erud. Part. 4. centur. octav. p. 559. and others not worth mentioning.

[5] Schol. Aristoph. ad Equit. v. 851. προυχειροτόνει ὁ δῆμος ὄστρακον

of earthenware (*τῇ κεραμικῇ μάστιγι*[6], to use the joke of the comic writers) the excessive power or arrogance of any of the citizens [245], the whole body of the people assembled on an appointed day in the Agora, a part of which was enclosed by a kind of railed fence, ten entrances being left for the admission of the ten tribes[7]. Through these the members of each tribe advanced, one by one, to deposit in an urn or box the pieces of earthenware on which the name of the individual whom they wished to banish was inscribed. It is from these pieces of earthenware, (*ὄστρακα*) that the name *ostracism* is derived. The nine Archons, with the Proedri and Prytanes, attended to see that due order was observed on the occasion[8]. These magistrates afterwards counted the votes, at first collectively, and if fewer than six thousand in all were given, the proceeding was declared to be at an end. But if the requisite number was found to have been delivered, they were counted a second time separately, and the individual whose name appeared on the majority of them was sentenced to banishment for a a term of ten years. This account is in conformity with the statement of Plutarch; others affirm that six thousand at least were required to vote for the banishment of of a single individual[9], [246] an opinion which certainly is

εἰσφέρειν (thus read for *εἰσφέρων*) *καὶ ὅταν δόξῃ, ἐφράττετο σανίσιν ἡ ἀγορὰ, κ. τ. λ.*

[6] Hesych. in v. and Taylor, vit. Lycurg. p. 115.

[7] The ancient writers from whom the most full and accurate account of the whole transaction may be derived, are Plutarch, vit. Aristid. cap. 7. Schol. ad Aristoph. Equit. v. 851. Jul. Pollux. viii. 20. Timæus, Lex. Plat. p. 114. Etymol. Mag. in v. *Ἐξοστρακισμός.* [Add the extract from Philochorus, in the Appendix to Harpocration (published at the end of Photius' Lexicon) sub v. *ὀστρακισμοῦ τρόπος.*]

[8] Schol. Aristoph. *Ἐπεστάτουν δὲ οἵτε θ' Ἄρχοντες καὶ ἡ βουλὴ*, i. e. not the whole of them, but their Presidents. Plutarch: *οἱ δὲ Ἄρχοντες διηρίθμουν τὸ σύμπαν τῶν ὀστράκων πλῆθος.*

[9] Schol. Aristoph. *ἀριθμηθέντων δὲ ων* (read *ᾧ ἂν*) [rather *ὅτῳ*, from Philochorus, ut sup. where *ὅτε* is written] *πλεῖστα γένοιτο* (*ὄστρακα*) *καὶ μὴ ἐλάττω ἑξακισχιλίων, τοῦτον ἔδει ἐν δέκα ἡμέραις μεταστῆναι τῆς πόλεως. εἰ δὲ μὴ γένοιτο ἑξακισχίλια, οὐ μεθίστατο.* Pollux: *ὅτῳ δὲ ἑξακισχίλια γένοιτο τὰ ὄστρακα, τοῦτον φυγεῖν ἐχρῆν*—which passage Kühn vainly endeavours to

in some measure confirmed by the consideration, that on other occasions on which the people voted by ballot, that number of votes was necessary for the ratification of any decree[1]. If, however, any one should be inclined to prefer the authority of Plutarch, in his very clear and distinct account of the transaction, I shall make no objection, provided he does not suppose that the same custom extended also to other διαψηφίσεις. Those who were condemned were obliged to leave the city within ten days, and the term of their exile was limited to ten years. This punishment, however, did not involve either infamy or the confiscation of property—in which respect it differed from the banishment of those who had been convicted by sentence of court[2]. But it very often happened that those exiled by ostracism were recalled before the expiration of the allotted time, by a decree of the people[3].

Many different accounts are given by the ancient writers respecting the institution of this custom. Little doubt, however, can be entertained, that it has been correctly assigned to Clisthenes, who, after the expulsion of the Pisistratidæ, introduced many excellent laws and customs tending to re-establish the commonwealth, and strengthen the liberty of the citizens[4]. [247] And it will

interpret consistently with Plutarch. The words of Timæus might favour either opinion: τῶν ὀστράκων ὑπὲρ ἑξακισχίλια γενομένων, φυγὴ δεκαετὴς καταψηφίζεται τοῦ κρινομένου.

[1] See three laws preserved by Demosthenes, adv. Timocr. p. 715. ib. p. 719. in Neær. p. 1375. which we shall hereafter adduce in their proper places.

[2] The Scholiast on Aristophanes (Equit. v. 851. and Vesp. 941.), and Suidas, who has copied him, (in v. ὀστρακισμὸς) state that the place into which the ostracised were to retire was assigned. This, however, is not probable, and is unconfirmed by other testimony.

[3] Plutarch, Pericl. chap. x.

[4] Ælian, Var. Hist. viii. cap. 24. whom most of the modern writers have followed. See Wesseling ad Diodor. tom. i. p. 445. nor is this opinion opposed by the testimony of Harpocration in v. Ἵππαρχος, where the words διὰ τὴν ὑποψίαν τῶν περὶ Πεισίστρατον mean "on account of the jealousy *against* the Pisistratidæ," and do not bear the sense given to them by Meursius, Pisistrat. cap. 7. In Heraclides Ponticus, however, we read that

be clear to all, how well this institution was adapted to a time when the Athenians had learned, to their own sorrow, the danger which too great wealth and power threatened to the welfare of the republic. And hence also it is very probable that the account given by some writers may be true, viz. that Hipparchus, the son of Charmus, a relation of Pisistratus, and on those grounds suspected by the people[5], was the first who was banished by ostracism; although others assert that Clisthenes was doomed first to experience the beneficial effects of his own invention. However this may be, it is agreed by all that the last who was banished by ostracism was Hyperbolus, a man of so detestable and despicable a character, that the dignity of that proceeding was thought to have received thereby an indelible stain, which caused its abolition for the future. Indeed, after that period no private individual was able to amass wealth to an amount which appeared dangerous to the liberty of the people: and if there were any who nevertheless endeavoured to revolutionise the state, recourse could be had to various other methods of restraining their seditious attempts, so that ostracism was by no means essentially necessary.

[248] Other states of Greece are said to have made use of similar institutions, as the Argives, the Milesians, and the Megarians[6]. The *Petalism* of the Syracusans

Hippias, the son and successor of Pisistratus, and not Clisthenes, was the author of ostracism. Some are of opinion that the passage containing this information is corrupt: but, supposing it not to be so, may we not be allowed to surmise that Heraclides was mistaken? It is very possible that he might have been deceived by reading that many were banished by Hippias also, on account of their wealth and influence. For these are things as fearful to tyrants as to free states. See Aristotle, Polit. iii. cap. 14. But who can ever believe that such a privilege was granted to the people by a tyrant? It is scarcely worth while to refute the opinion of those who suppose the institution to have been as old as Theseus. On the son of Lyson, Achilles, who is also said to have been the founder of it, see Hemsterhuis on Aristoph. Plut. v. 627.

[5] Diodor. Sic. xi. 87. Plutarch, vit. Nic. c. 11. Harpocrat. in v. Ἵππαρχος.

[6] Concerning the Argives see Aristotle, Polit. v. c. 3. The Schol. on

was in fact identical with the ostracism of the Athenians, and differed only in the circumstance of the former using *leaves* (πέταλα) instead of earthenware[7].

CHAPTER VII.

On Enacting and Abrogating Laws.

Before I enter upon the discussion of this subject, I shall beg leave to suggest to my readers the importance of distinguishing accurately between *laws* (νόμοι) and *decrees* (ψηφίσματα); and to warn them not to be led by the use of the Latin word *lex* into the error of confounding two perfectly different things. For the Romans applied the term *leges* not only to their civil and public institutions in general, but also to any measures appertaining to single things and single individuals[1]. Among the Athenians, however, [249] one of these two kinds was called νόμοι, the other ψηφίσματα. The former we shall designate (when we wish to distinguish accurately between the two) as *laws;* while to express the latter we shall retain the Greek word *psephismata*, as most writers have done before us[2]. [250] Laws,

Aristoph. Equit. 851. mentions the Milesians and Megarians together with the Argives. The assertion of Petit, Leg. Att. p. 457. is false, that the Athenians adopted ostracism not only at Athens but also in their subject states. Aristotle (Polit. iii. 13.), cited by Petit, merely asserts that they removed from their subject states as well as from Athens all such as appeared too influential and wealthy. But they did not make use of pieces of earthenware in doing so, any more than did the king of the Persians, who, as Aristotle says in the same passage, ἐπέκοπτε πολλάκις Μήδους καὶ Βαβυλωνίους καὶ τῶν ἄλλων τοὺς πεφρονηματισμένους, διὰ τὸ γενέσθαι ποτ' ἐπ' ἀρχῆς.

[7] Diodorus Siculus, xi. 86—7.

[1] See Ernesti, Clav. Cic. in Ind. Leg. and compare Aulus Gellius, Noct. Att. x. 20.

[2] Some have translated ψηφίσματα by the Latin word *decreta*. But it is well known that the ancient Latins adopted the form *psephisma* from the Greek. On the distinction between *laws* and *decrees*, see Biagi de Decret. Athen. i. §. 4. and Wolf ad Demosth. Leptin. p. 310. to whom might be added many others, were it necessary to enumerate all. We must however observe, that the ancients themselves did not always distinguish accurately between the above words: for ψηφίσματα has sometimes a more extended

then, and psephismata, differ not only in their subject, or purport and force, but also in the ordinary and regular manner of proposing them. What this manner was with reference to the latter, we have already, we trust, explained with sufficient fulness and accuracy. The process was neither complex nor difficult, because it was frequently of the highest importance that they should be carried as expeditiously as possible, (especially in any sudden emergency, when they were chiefly required,) and that no obstacle or delay should stand in the way of those who were able and willing to benefit the state by their advice. But Solon took far greater precaution to prevent too great facility in proposing new and abrogating old laws on any occasion and for any cause. That legislator rightly foresaw that little or no confidence could be placed in the authority of laws which were incessantly altered, remodelled, and exchanged; and that those only which

signification, and is applied to any measure which, after having been ratified by the votes of the citizens and duly recorded, is binding upon the people, whether intended as general and lasting (which is characteristic of the civil and public jurisprudence) or temporary, and limited to some peculiar case, with the cessation of which it becomes invalid, and as such is properly a *psephisma.* Thus the law of Demophantus, preserved by Andocides, de Myst. p. 13. 2. seq. relating to treason, is called a ψηφίσμα, though neither special nor temporary, but properly a law, as indeed it is designated more than once afterwards by the very same orator. And similarly Ælian calls a law of Lycurgus ψήφισμα, which is more correctly termed *νόμος* by the Pseudo-Plutarch. Ælian, Var. Hist. xiii. 24. Λυκοῦργος ὁ ῥήτωρ ἔγραψε, μὴ ἐλαύνειν τὰς γυναῖκας ἐν τοῖς μυστηρίοις ἐπὶ ζευγῶν·—πρώτη δὲ τῷ ψηφίσματι ἠπείθησεν ἡ τούτου γυνή. Pseudo-Plut. vitt. x. oratt. in Lycurg. p. 841. E. 842. A. Εἰσήνεγκε δὲ καὶ νόμους ἐπὶ ζεύγους μὴ ἀπιέναι γυναῖκα Ἐλευσίναδε. In Athenæus, lib. vi. cap. 6. mention is made of a ψήφισμα respecting the parasiti, which was unquestionably a *νόμος.* And it may not be inapplicable to remark here the expression of Aristophanes, Vesp. v. 377. τὰ ταῖν θεαῖν ψηφίσματα, jocosely used for τοὺς νόμους, in allusion to the affection due to parents, which might be termed *the law of Ceres and Proserpine,* because they used to attribute to these deities all the kindness and humanity which they met with in life, and celebrated to them the Mysteries on that very account. On this extended signification of ψήφισμα the reader is for the present referred to Biagi, de Decret. Ath. i. §. 4. although the passage adduced by him from Demosthenes de Coron. p. 291. is nothing to the purpose. For the kind of psephismata there mentioned is altogether different, and has been noticed by us in Book I. chap. 12.

had been sanctioned and established by long usage, and under which the citizens had as it were been born and educated, were likely to be religiously observed. From this conviction he derived the excellent principle that *it was better to retain old laws, even though in some respects objectionable, than to be always eager to change them for new ones, though possibly superior*[3]. And his motive for entertaining this opinion was the self-evident truth, that it is less hurtful to observe bad laws than to break good ones[4]. For this reason he did not choose to entrust to the fickle multitude, [251] always exposed to the intriguing designs of their demagogues and ready at any time for revolution, the decision in a matter of so great importance; but he deputed it to a select number of commissioners, called Nomothetæ, who were nominated by the people, for each several occasion, out of the Heliastic judges. To this body, therefore, was entrusted the entire power to enact new and abrogate old laws, and, as it were, to superintend and direct the legislature at their own discretion. The tendency of this institution was to blend and happily combine democratic sway with Aristocratic authority; since, as the arbitrary adoption or rejection of laws is one of the strongest features of a democracy[5], so a college like that of the Nomothetæ partook more of the Aristocratic character which the constitution of Solon imparted to the state. For it must be remembered, that in the earlier times, before the pay of the Dicasts was instituted, the Heliasts were composed exclusively of the richer and higher ranks of the citizens, who, being above the necessity of providing for their domestic wants, gratuitously contributed their services to benefit the state.

Whenever, therefore, any change in the legislature was

[3] Compare Aristotle, Polit. ii. 8. extr. Ὁ γὰρ νόμος ἰσχὺν οὐδεμίαν ἔχει πρὸς τὸ πείθεσθαι, πλὴν παρὰ τὸ ἔθος· τοῦτο δὲ οὐ γίνεται, εἰ μὴ διὰ χρόνου πλῆθος· ὥστε τὸ ῥᾳδίως μεταβάλλειν ἐκ τῶν νόμων εἰς ἑτέρους νόμους καινοὺς, ἀσθενῆ ποιεῖν ἐστὶ τὴν τοῦ νόμου δύναμιν.

[4] Thucyd. iii. 37. χείροσι νόμοις ἀκινήτοις χρωμένη πόλις, κρείσσων ἐστὶν, ἢ καλῶς ἔχουσιν ἀκύροις.

[5] See Aristotle, Polit. iv. 4.

contemplated, either by enacting new or repealing old laws, these Nomothetæ were appointed for the occasion by the people. For the purpose, however, of regularly taking this subject into consideration, a definite period, the commencement of every year, was allotted, upon which anniversary a review of the laws then in force (*ἐπιχειροτονία νόμου*) was instituted. The nature and order of this ceremony will be best understood by annexing a translation of the laws upon the subject, which are preserved in the Oration of Demosthenes against Timocrates[6], and which are as follows:

"On the eleventh day[7] of the first Prytany, in the assembly of the people, [252] after the prayer shall have been delivered by the crier, let the votes of the people be taken on the subject of the laws; first, those pertaining to the senate; secondly, those to the state in general; thirdly, those to the nine Archons; and lastly, those to the other magistrates. And let the people determine by vote upon the efficiency[8] and adequacy of each law of the above kinds. And let the proceeding be conducted in every respect in conformity with the established laws.

"And if any of the established laws be objected to, let the Prytanes who shall be in office at the time, appoint the last of the three assemblies for deliberation upon them; and let the Proedri for the time being in that assembly, not fail to consult the people the first thing after the prayer upon the election of Nomothetæ, upon the

[6] P. 706.

[7] It is clear from my remarks in Book i. chap. 2. that the first Prytany extended from the first day of Hecatombæon to the fifth of Metagitnion; and consequently that the eleventh of the first Prytany corresponded with the eleventh of Hecatombæon—whence the assembly held on that day was the first in the year.

[8] *ἡ δ' ἐπιχειροτονία ἔστω ἡ προτέρα, ὅτῳ δοκοῦσιν ἀρκεῖν οἱ νόμοι οἱ βουλευτικοί, κ. τ. λ.* The Latin *sufficere* is an unsatisfactory representative of the Greek *ἀρκεῖν*. The people were not only asked whether they considered the laws sufficient in point of number, but also whether they thought them good and adequate. They did not, besides, merely order them to be augmented, but the old to be substituted, if necessary, for new—as is evident from what follows; *ἐὰν δέ τινες τῶν νόμων τῶν κειμένων ἀποχειροτονηθῶσι.*

manner and purpose of their session, and upon providing their pay.

" And let the Nomothetæ be of the number of those who have taken the Heliastic oath.

[253] " And if the Prytanes neglect to hold the assembly as appointed by law, or the Proedri to consult the people, let each of the Prytanes be fined one thousand drachmæ to be consecrated to Minerva, and each of the Proedri forty drachmæ[9]: and let information (ἔνδειξις) be laid against them before the Thesmothetæ, in the same manner as against those who hold office when debtors to the treasury: and let the Thesmothetæ bring them up for trial in the court according to the law; or, if they refuse to do so, let them not be afterwards promoted to the Areopagus, as having been an obstacle to the improvement of the laws.

" And before the third assembly, let any Athenian who wishes put forth in front of the Eponymi, for public inspection, any laws which he may intend to propose, in order that the people may determine the period of office for the Nomothetæ by the proportionate number of the laws proposed.

" And let the motion intended for proposal be copied out fairly by the author and exposed before the Eponymi daily till the assembly be held.

" On the eleventh of Hecatombæon[1] [in the first assembly] let five advocates be nominated by the people out of the whole number of the citizens [254] to defend the

[9] Ulpian endeavours to account for this singular inequality, p. 446. 32: ἄξιον ζητῆσαι διὰ τί οὕτως ἀνώμαλον ἔταξαν οἱ νόμοι τὴν ζημίαν κατά τε τῶν πρυτάνεων καὶ τῶν προέδρων· καὶ λέγομεν, ὅτι βαρύτερόν ἐστιν ὅλως τὸ μὴ συνάξαι τὸν δῆμον εἰς ἐκκλησίαν τοῦ μὴ ὑποβάλλειν· διὸ ἐπὶ τῶν πρυτανέων τῶν μὴ συναγόντων τὸ πλέον ἔταξαν. This explanation (in which Petit acquiesces, Leg. Att. ii. 1. p. 177.) at least proves the great antiquity of the usual reading, and consequently detracts from the probability of Reiske's conjecture, τετταράκοντα μνᾶς, being correct.

[1] In the Scholium of Ulpian on this passage, p. 446. 36. it is evident that we should write οὗτος γὰρ ἦν, for οὐ γὰρ ἦν ὁ πρῶτος μήν.

laws which are proposed to be abrogated in the court of the Nomothetæ."

We shall now proceed to comment upon the above laws: for that they are extracts from, or fragments of, several, and not *one*, is proved by the words which Demosthenes addresses to the scribe: *λαβὲ τουτουσὶ τοὺς νόμους καὶ ἀνάγνωθι*: and to the judges: *προσέχετε τὸν νοῦν ἀναγιγνωσκομένοις τοῖς νόμοις*: and again, after the laws had been read: *οὗτοι πάντες οἱ νόμοι κεῖνται πολὺν ἤδη χρόνον*[2]. These laws then, or fragments of laws, show in the first place, that, in the above-mentioned *ἐπιχειροτονία*, or annual review, the people had the option either of allowing the old laws to remain in force unaltered, or of authorizing new ones[3] to be substituted: but that they could not decide or vote upon the question without having previously heard the arguments of the orators in favour either of the former or the latter expedient. And any citizen in that assembly might recommend to the people the adoption of a new, or the abolition of an old law[4], provided [255] he had previously presented his motion to the senate for their examination, and

[2] See Taylor in loc. and Wolf, ut sup., who questions whether the passage be now read as Demosthenes wrote it. It certainly cannot be denied that these public letters which are extant in the orators frequently appear interpolated, mutilated, and corrupt: in the present passage, however, I can detect nothing to authorize such a suspicion.

[3] Demosthenes himself (p. 707) subjoins this explanation: *καὶ πρῶτον μὲν ἐφ' ὑμῖν ἐποίησαν διαχειροτονίαν, πότερον εἰσοιστέος ἐστι νόμος καινὸς, ἢ δοκοῦσιν ἀρκεῖν οἱ κείμενοι.* He here assigns to the judges whom he is addressing what in reality appertained to the people in general—a custom not unfrequent with the orators. See Wolf, ut sup. not. 123.

[4] This is clear from the direct words of the decree: *ὁ βουλόμενος Ἀθηναίων νομοθετεῖν, ἐκτιθέτω τοὺς νόμους*—and from those of Demosthenes in explanation of it: *προσέταξαν τοῖς βουλομένοις εἰσφέρειν, κ. τ. λ.* Petit therefore (Leg. Att. p. 173.) was wrong in denying it. He thinks that the words of the Scholiast ad Aristoph. Vesp. 772: *εἶχον δὲ καὶ ἑκάστη φυλὴ ἕνα Θεσμοθέτην καὶ γραμματέα, εἰς τὸ τοὺς νόμους εἰσηγεῖσθαι*, prove that ten persons were chosen, one from each tribe, to draw up laws, and a scribe to recite them both in the senate and the assembly. But this account of the Scholiast is obviously of no authority, and it is evident from what source he derived it.

obtained their permission to bring it before the people[5]. Any one who thought the measure proposed inefficient or improper, could object to it; and after the question had been canvassed by its supporters and opponents, the people proceeded to determine by vote upon its adoption or rejection. The legitimate and prescribed order in which the proceeding was to be conducted, was that the laws relating to the senate should be first discussed, then those relating to the state in general; thirdly, those to the nine Archons; and lastly, those to the rest of the magistrates. If the people had permitted any new laws to be proposed as substitutes for the old, five advocates (*συνήγοροι* or *σύνδικοι*) were appointed to defend and maintain each of the latter in the court of the Nomothetæ[6]: and they were usually, I apprehend, selected from the opponents of the new laws. Any one, however, beside these publicly nominated advocates, was at liberty to undertake the defence of the established laws, to preclude the possibility of arguments in their behalf being ever wanting, even though the public advocates should chance to perform their part somewhat inefficiently. For this reason it was enacted [256] that those who intended to propose any new measure, should copy it out fairly, and publicly expose it in front of the statues of the Eponymi[7]: and that it should moreover be read aloud by the scribe in every assembly till the session of the Nomothetæ took place[8], in

[5] We might safely conclude, even without the express testimony of the ancients, that no law could be proposed to, or canvassed by, the people without the permission of the senate: for we have already shown that nothing could be presented to the notice of the former in assembly without the sanction of the latter. We have, however, the testimony of Pollux, viii, 101. *τοὺς γὰρ νέους νόμους ἐδοκίμαζεν ἡ βουλὴ καὶ ὁ δῆμος καὶ τὰ δικαστήρια.* But if the senate was to be consulted *after*, and not *before*, the proposal of a law, its authority would have been very inconsiderable. I have not chosen to adduce a passage of Demosthenes, in Timocr. p. 715, because a particular *kind* only of bills is there referred to.

[6] See Wolf, ut sup. p. cxxxvi. note 138.

[7] On these ten heroes, after whom Clisthenes named his tribes, and whose statutes were placed in front of the Senate-house and Prytaneum, or Town Hall, see Wolf, ut sup. p. cxxxiii. not. 132.

[8] Demosth. adv. Leptin. p. 485. §. 75. Wolf.

order that its purport might be more easily made known to all, and that those who wished to oppose it on that occasion might be more fully prepared to do so[9]. Lastly, on the third of the regular assemblies, which fell about the end of Hecatombæon, the appointment of the Nomothetæ was to be discussed and determined. For this purpose the Proedri consulted the people upon the number, time of office, pay, and duties of that college; that is, of what laws they should have cognizance, and how they should discharge the duties assigned to them. If the Prytanes had neglected to hold an assembly, or the Proedri to consult the people, as the law prescribed, each of the former were fined one thousand drachmæ, and each of the latter, forty, [257] to be applied to the service of Minerva; and information by ἔνδειξις could be laid against them by any citizen before the Thesmothetæ, who, if they refused to receive it, were excluded, after the expiration of their office, from sitting in the Areopagus, to which distinction the Archons were regularly promoted, if their conduct in the discharge of their duties appeared to the people satisfactory.

The Nomothetæ were elected by command of the people (by lot, as it would seem; though in what manner we are not informed[1]) from the number of those who had

[9] Demosth. adv. Timocr. p. 708. ἐν δὲ τῷ μεταξὺ τούτῳ χρόνῳ, προσέταξαν τοῖς βουλομένοις εἰσφέρειν, ἐκτιθέναι τοὺς νόμους πρόσθεν τῶν Ἐπωνύμων, ἵν' ὁ βουλόμενος σκέψηται, κἂν ἀσύμφορόν τι ὑμῖν κατίδῃ, φράσῃ καὶ κατὰ σχολὴν ἀντείπῃ, κ. τ. λ. Compare also ibid. p. 711. τοὺς συνηγόρους, οὓς χειροτονεῖτε, δύναιτ' ἄν τις πεῖσαι σιωπᾷν. ἐκτιθέναι κελεύει, τοῦ προειδέναι πάντας, ὡς τάχ' ἂν, εἰ τύχοι, τοὺς μὲν ἀντειπόντας ἦν, εἰ (μή) προαίσθοιντο, λάθοι, οἱ δ' οὐδὲν προσέχοντες ἀναγνοῖεν ἄν. The meaning is this:—If the laws were not exposed to public view, it might easily happen, that those who would otherwise have opposed them, should know nothing about them; while those who were unconcerned about them might chance to read them. But the negative μὴ before προαίσθοιντο, which destroys the sense, should, I think, be expunged—though there are grounds of suspicion that the passage is otherwise corrupt. [Μὴ refers to λάθοι, not to ἀντειπόντας ἄν.]

[1] Probably, however, the office of appointing them by lot devolved upon the Prytanes; for in the decree of Epicrates, in Demosth. ad Timocr. p. 708. those magistrates are enjoined καθίσαι Νομοθέτας.

sworn the Heliastic oath, that is, if I mistake not, who had been appointed Heliasts by lot *for that year*. Their number is said to have been for each occasion 1000, or 1001[2]; although it is very probable that it varied according to the number of laws to be abrogated and the diversity of the causes for which they were nominated. The very fact of 1001 being proposed in the decree of Epicrates, in Demosthenes[3], seems to show that the number was not definite; for if so, why should that particular number have been proposed on that one occasion? Moreover the statement of Pollux[4]: *νομοθέται ἦσαν χίλιοι*, is probably derived from no other source than that very decree. It is obvious also that the term of their office was equally undefined, for the people are ordered in the laws which we have just cited to proportion it to the number of the laws proposed. Neither do we know what sum of money they received for their services; although the conjecture [258] of Boeckh is highly probable, that their pay was three obols per diem[5].

Before these Nomothetæ, therefore, the old and new laws were canvassed and discussed by their respective supporters. The former were defended by the publicly appointed *σύνδικοι*, and any one else who might be disposed to aid them, and the latter seconded and urged by their authors, who were also at liberty to bring their own party to assist. After sufficient discussion, the Nomothetæ, being asked their opinion, gave their votes by a show of hands[6]; and whatever laws were approved by them, whether the old to the rejection of the new, or the new to the abolition of the old, were thenceforth valid and

[2] See Petit, p. 177.

[3] Adv. Timocr. p. 708.

[4] VIII. 101. On the doubtful question, the *number* of the Nomothetæ, see Wolf, ut sup. p. cxxxv. note 137.

[5] Publ. Œcon. i. 257.

[6] Demosth. adv. Timocrat. p. 710. (extract from a law): *διαχειροτονίαν δὲ ποιεῖν τοὺς Προέδρους περὶ τούτων τῶν νόμων, πρῶτον μὲν περὶ τοῦ κειμένου, εἰ δοκεῖ ἐπιτήδειος εἶναι τῷ δήμῳ τῶν Ἀθηναίων, ἢ οὔ. ἔπειτα περὶ τοῦ τιθεμένου. ὁπότερον δ' ἂν χειροτονήσωσιν οἱ Νομοθέται, τοῦτον κύριον εἶναι.*

binding upon all the citizens. The Proedri presided in the court of the Nomothetæ in the same manner as in the assembly, and the votes were taken by the command of their Chairman[7]. The senators, if not invariably, occasionally at least attended as assessors (*παρήδρευον*)[8]. Their decrees were drawn up in the same manner as the psephismata of the people; and a specimen of them will be found in the oration of Demosthenes against Timocrates:—

[259] *Ἐπὶ τῆς Πανδιονίδος πρώτης, τῆς πρυτανείας δωδεκάτῃ*[9], *τῶν προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυρρινούσιος, Τιμοκράτης εἶπε, κ. τ. λ.*

But it seems that besides this review of the laws which took place at the commencement of every year, there was also another, likewise annual, of which mention is made by Æschines in his oration against Ctesiphon. He there asserts it to have been customary for the Thesmothetæ to revise and correct the laws once a-year in the assembly, and to examine accurately whether there were any at variance with others, any which had been annulled and become invalid still in force among the rest, or whether more than one were in existence upon the same subject. If any such were detected, they were to be copied out and exposed to view before the statues of the Eponymi, and the Prytanes were required to convene the people for the purpose of nominating Nomothetæ, permission to vote being given them by the Chairman of the Proedri. And

[7] Demosth. ut sup. p. 723. from the head of a law passed in the court of the Nomothetæ: *τῶν Προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυρρινούσιος.* Myrrhinus was a demus of the Pandionid tribe, which was at that time holding its Prytany. There is some reason in the definition *ἐκκλησία τις* applied to the assembly of the Nomothetæ in the Lex. Rhetor. Bekk. Anecdot. p. 282.

[8] Demosth. ut sup. p. 708. from the decree of Epicrates: *τοὺς δὲ Νομοθέτας εἶναι ἕνα καὶ χιλίους, ἐκ τῶν ὀμωμοκότων· συννομοθετεῖν δὲ καὶ τὴν βουλήν.*

[9] We here observe that the meeting of the Nomothetæ is held on the twelfth day of the Prytany, whereas the law quoted above enjoins that they be not appointed before the third assembly of the first Prytany, which fell about the thirtieth day. This irregularity, however, we must attribute to the arts of Timocrates, who despaired of being able to carry his law in the legimate manner.

thus the laws were to be so altered, revised, and substituted, that one and not more than one should exist on each subject[1].

The above account of this *second* annual review of the laws seems deducible from, though not definitely expressed in, the cursory allusion to the subject made by Æschines. [260] The actual laws regarding this office of the Thesmothetæ are read to the judges, at his request, by the scribe, but are not given by him in the oration. Had he thought fit to do so, the doubts which at present exist, whether this review was identical and held at the same time with the former, or whether it was a totally unconnected and different proceeding, would have been removed. The former opinion is entertained by F. A. Wolf[2], the latter by Petit[3], with whom I am inclined to coincide. For, as the first review was held in the month Hecatombæon, on the first day of which the Thesmothetæ entered upon their office, I cannot persuade myself that so short a space of time was devoted to so important and so laborious an undertaking. Imagine the

[1] Æschin. adv. Ctesiph. p. 430. seq. corrected in some places from the version of Lambinus. The words of the orator, ἐν τῷ δημοσίῳ, are rendered by his translator, *in publico*. Doubtless, however, the true reading is ἐν τῷ δήμῳ, which I have adopted, as such. The words ἐπιγράψαντας Νομοθέτας are rendered, *nominibus eorum adscriptis qui eas leges tulerint;* which interpretation Wolf (Proleg. ad Leptin. not. 154.) has shown to be false. Ἐπιγράφειν, in the opinion of the learned commentator, is the same as ἀποδιδόναι, *attribuere, designare, constituere;* which was properly the part of the people, not of the Prytanes. I cannot, however, find any instance in which the word is used in this sense; nor, indeed, if such could be found, would the aorist have been here used, as it appears to me, but the future. I am rather inclined to suppose that ἐπιγράφειν is here used for the more usual word προγράφειν, (see Demosth. de fals. leg. p. 399.) and that ἐπιγράφειν Νομοθέτας is a concise expression, meaning *to announce by a program that an assembly will be held for discussion about the Nomothetæ.* The words which follow, καὶ τοὺς μὲν ἀναιρεῖν τῶν νόμων, τοὺς δὲ καταλείπειν, are not to be taken in connection with those which precede; for they do not relate to either the assembly or the Chairman, but to the appointment of the Nomothetæ, by command of the people, after the assembly had been held. We should therefore place a colon, and not a comma, between the sentences.

[2] Ut sup. p. cl. [3] Leg. Att. p. 187.

entire code of laws being carefully revised by them in a few days, in such a manner as to detect every thing which appeared in the slightest degree objectionable in them! Moreover there were many difficult and fatiguing duties beside this one, for the Thesmothetæ to attend to; so that it appears far more probable that the revisal and correction of the laws should have been expected from them at the close of the year, when they would have acquired, by the very exercise of their office, a much more accurate knowledge of Athenian jurisprudence than they were at first likely to possess. But whichever opinion be [261] the true one, some points at least, namely, the exposure, before the Eponymi, of the laws, the assembly of the people for deliberation upon them, and the appointment of the Nomothetæ, were common to both proceedings. It is not improbable, too, that the Thesmothetæ had the office of explaining and showing to the people some particular system of emending the laws, so as to demonstrate to them which were preferable to others. There appear at least, some grounds for inferring this, from the words of Æschines, (*τοὺς Θεσμοθέτας*) *καθ' ἕκαστον ἐνιαυτὸν διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους*. Undoubtedly, however, any other citizens who chose were allowed to give the people advice in this respect. And the people in assembly determined by vote upon these recommendations of the Thesmothetæ and others, and at the same time upon the duties, number, term of office, and pay of the Nomothetæ, as well as appointed orators, mostly from the number of those who had been speakers, to undertake the defence, and as it were plead the cause, of the different laws before the Nomothetæ.

No old law could be repealed nor new one substituted, except in the court of the Nomothetæ, as we know from the words of the law itself[4]:

Τῶν δὲ νόμων τῶν κειμένων μὴ ἐξεῖναι λῦσαι μηδένα, ἐὰν μὴ ἐν Νομοθέταις. τότε δ' ἐξεῖναι τῷ βουλομένῳ τῶν

[4] Demosth. adv. Timocrat. p. 710.

Ἀθηναίων λύειν, ἕτερον ἀντιτιθέντι[5] *ἀνθ' ὅτου ἂν λύῃ.* But whether the appointment of Nomothetæ was usual in other times than those of which I have been speaking, cannot, it seems, be either confidently asserted or positively denied. I am inclined, however, to suppose [262] that these two were the only legitimate occasions upon which they were nominated. And their first meeting seems to have been devoted to a recension of the *ancient* or established laws (*οἱ κείμενοι*), and to the repeal of those which were either at variance with others, obsolete (*ἄκυροι*), or superfluous (*πλείους ἑνὸς περὶ ἑκάστης πράξεως*); while the second was held for the purpose of substituting new ones in the place of those which had been thus repealed. I imagine therefore that new laws could only be proposed at the commencement of each year, and in that assembly in which the annual *νόμων ἐπιχειροτονία* was held, when the people either at once rejected them or referred them to the further consideration of the Nomothetæ. This opinion might at first sight appear to derive some confirmation from a passage in the oration of Demosthenes against Timocrates, where the orator speaks of a certain definite and fixed time *τοῦ νομοθετεῖν*: but a more accurate consideration of the whole tenor of that passage will convince the reader that the author merely meant to imply, that it was illegal to appoint Nomothetæ and refer a law to their consideration, as was done by Timocrates, immediately after the annual review of the laws (*ἐπιχειροτονία*) which took place on the eleventh of Hecatombæon. On the contrary, he urges, it was necessary to wait until after the third assembly, when, the laws having been during the whole of the intervening time exposed before the Eponymi, and advocates (*σύνδικοι*) appointed, the proceeding could be conducted in the regular and authorized manner at the annual session

[5] Thus we should read with Wolf, Proleg. ad Leptin. p. cxxx. instead of the reading of the old editions, *ἕτερόν τι τιθέντι*, or the conjecture of Taylor, adopted by Reiske, *ἕτερον τιθέντι*.

of the Nomothetæ[6]. But there is a passage in [263] the oration against Leptines[7] which is still more applicable to our present subject. The orator there engages, that he will propose a law as soon as ever the Nomothetæ shall have been appointed: which clearly shows that a law could not be proposed whenever the author wished, but that he must wait till the Nomothetæ were nominated. What, therefore, can be more probable, than that he alludes to their regular annual appointment at the commencement of the year? This is besides the opinion of Ulpian[8]. And in this place we will refer to [264] another

[6] The passage of Demosthenes I shall subjoin. It is in the oration against Timocrates, p. 705. *Ἔστιν, ὦ ἄνδρες Ἀθήναιοι, ἐν τοῖς οὖσι νόμοις ὑμῖν κυρίοις διωρισμένα ἀκριβῶς καὶ σαφῶς πάνθ' ὅσα δεῖ ποιεῖν περὶ τῶν μελλόντων τεθῆσεσθαι νόμων· καὶ πρῶτον μὲν ἁπάντων, χρόνος ἐστὶ γεγραμμένος, ἐν ᾧ προσήκει νομοθετεῖν· εἶτ' οὐδὲ τόθ', ὡς ἂν ἑκάστῳ δοκῇ, δέδωκε τοῦτο πράττειν, ἀλλὰ προστάττει πρῶτον μὲν ἐκθεῖναι πρόσθεν τῶν Ἐπωνύμων γράψαντα, σκοπεῖν τῷ βουλομένῳ, κ. τ. λ.* That is, it is not only necessary to wait for the proper time, after the third assembly, but also to expose the laws for public inspection until that time arrives. With this passage should be compared another, in p. 707. *πρῶτον ἐφ' ὑμῖν ἐποίησαν (οἱ νόμοι) διαχειροτονίαν, πότερον εἰσοιστέος ἐστι νόμος καινὸς, ἢ δοκοῦσιν ἀρκεῖν οἱ κείμενοι. μετὰ ταῦτα δ', ἂν χειροτονήσητε εἰσφέρειν, οὐκ εὐθὺς τιθέναι προσέταξεν, ἀλλὰ τὴν τρίτην ἀπέδειξεν ἐκκλησίαν. καί οὐδ' ἐν ταύτῃ τιθέναι δεδώκασιν, ἀλλὰ σκέψασθαι, καθ' ὅτι τοὺς Νομοθέτας καθεδεῖτε.* And again, p. 708. he asserts of Timocrates, *οὔτ' ἀνέμεινεν οὐδένα τῶν τεταγμένων χρόνων ἐν τοῖς νόμοις, κ. τ. λ.*

[7] P. 498. R. §. 115. Wolf.

[8] P. 307. 226. Ben. *λέγει δὲ, ἐπειδὰν πρῶτον ἡ πόλις Νομοθέτας καθίσῃ, τότε πρῶτον εἰσαχθήτω ὁ νόμος.* (*ἔθος γὰρ ἦν τῇ πόλει, εἰ γένοιτο χρεία νομοθετεῖν ἔξ,* (this is manifestly corrupt) *ὡς ἐν τῷ κατὰ Τιμοκράτους φησίν.*) *ἀξιῶν εὐθὺς καὶ παραχρῆμα εἰ κατ' ἀρχὰς τοῦ ἔτους γένοιντο Νομοθέται, τοῦτον εἰσάγεσθαι πρῶτον τὸν νόμον ἐν τοῖς πρώτοις Νομοθέταις.* It is, however, evident that Ulpian supposed Nomothetæ could be created at other times also, if necessary: and so perhaps they could be, but only as extraordinary ones. Wolf also (Proleg. p. cxxxxii. not. 145.) is of the same opinion upon the above passage of Demosthenes. But he adds another conjecture upon the manner of proposing laws. "Etsi haud dubium est, quin, quo quisque tempore vellet, novam legem posset proponere: tamen plura in eam me sententiam trahunt, ut putem omnes leges, quotquot per annum propositæ essent, tandem in primâ Prytaneâ novi anni ad legitimum judicium Nomothetarum vocari debuisse, eoque demum secundum latorem facto, *νόμον* fuisse *κύριον*." But the passages which he adduces in support of this conjecture, that a new law could be proposed at any time, viz. Demosth. in Timocrat.

passage in Demosthenes, in which he complains of the conduct of the demagogues of that time in so frequently setting at defiance the established method of proposing laws:—*τῶν πολιτευομένων τινὲς δυνηθέντες, ὡς ἐγὼ πυνθάνομαι, κατεσκεύασαν αὑτοῖς ἐξεῖναι νομοθετεῖν, ὅταν τις βούληται, καὶ ὃν ἂν τύχῃ τρόπον.* Now this passage most distinctly proves, that it was illegal for any one to propose laws whenever he chose, and without waiting for the regular time peculiarly appropriated to that purpose. There is another complaint to the same effect in the oration against Timocrates: *οἱ παρ' ὑμῖν ῥήτορες ὅσοι μῆνες μικροῦ δέουσι νομοθετεῖν τὰ ἑαυτοῖς συμφέροντα.* Are we, I would ask, to suppose, that, as new laws were so frequently proposed in that age, Nomothetæ were created for every such occasion? This appears highly improbable. Or are we to surmise, as Wolf suggested, that all those laws, at whatever time they were proposed, were postponed till the commencement of the next year, and then submitted collectively to the examination of the Nomothetæ at their customary meeting, for their ultimate approval or rejection? What, then, it will be asked, was done with those laws in the mean time? They were proposed. But what was the motive of this? In order that all might make themselves perfectly acquainted with their nature and tendency, and, by thus knowing them some time before they could be finally carried, more easily detect any fallacy which they might contain, so as to be fully prepared to oppose or prosecute them if they pleased. But this seems altogether inconsistent with the principle of the demagogues. Their object is deception; and while they excite, cajole, and unsettle the minds of the multitude, they elude by their cunning the endeavours of the wise and good to oppose and restrain them. It is therefore incredible that they should ever have proposed their laws at any other than [265] the regular time, if they were likely to lose instead of gain by doing so. More-

p. 744. adv. Leptin. p. 484. seq. I could, if I am not very much mistaken, bring to prove the direct contrary. Of this, however, others must judge.

over, in that case there would have been no just grounds for the complaint of Demosthenes. It appears to me, therefore, more probable, that the intrigues of the demagogues at length effected such a change in the principle of the legislature, that the institution of Solon gradually fell into disuse, and new laws were enacted no longer exclusively by the Nomothetæ, but by the people collectively in assembly. By such means, these popular favourites could carry any motion which they pleased with the greatest facility and expedition; and by thus increasing the power of the people they were sure proportionally to enhance their own influence. And this is precisely the point to which Aristotle alludes in the following words[9]: *Αἴτιοι δέ εἰσι τοῦ εἶναι τὰ ψηφίσματα κύρια, ἀλλὰ μὴ τοὺς νόμους οὗτοι (οἱ δημαγωγοὶ), πάντα ἀνάγοντες εἰς τὸν δῆμον. συμβαίνει γὰρ αὐτοῖς γίνεσθαι μεγάλοις, διὰ τὸ τὸν μὲν δῆμον εἶναι κύριον, τῆς δὲ τοῦ δήμου δόξης τούτους· πείθεται γὰρ τὸ πλῆθος τούτοις.* By *ψηφίσματα*, in this passage, Aristotle means to imply any decrees of the people, general as well as particular, which have the force of laws properly so called[1]; while *νόμοι* are the *ancient* institutions of the legislators.

That Solon was the author of the appointment of these Nomothetæ admits of no doubt, because the fact is attested by both Æschines and Demosthenes, who, in speaking of the subject, either expressly assert or distinctly intimate such to have been the case. For example:—in the oration against Leptines[2], Demosthenes, after the law had been read in accordance with which "*ἐνομοθέτησαν οἱ πρότερον νομοθέται*[3]," thus addresses

[9] Polit. lib. iv. cap. 4. ad fin.

[1] See note 1, at the beginning of this chapter.

[2] P. 485. Compare also p. 484.

[3] I must here remind those of my readers, whose knowledge of these subjects is yet imperfect, that the word *νομοθετεῖν* is used in different senses; it being sometimes applied to any citizen who proposed a new law, whether in a private capacity or as legislator by public appointment, like Solon; sometimes to those elected to the office of Nomothetæ from the number of the Heliasts, for the purpose of examining every law before it was made valid;

[266] the Heliasts: *συνίετε, καθ' ὃν τρόπον, ὦ ἄνδρες Ἀθήναιοι, ὁ Σόλων τοὺς νόμους ὡς καλῶς κελεύει τιθέναι; πρῶτον μὲν παρ' ὑμῖν, ἐν τοῖς ὀμωμοκόσι, παρ' οἵσπερ καὶ τἄλλα κυροῦται.* Although the party he addresses were not actually Nomothetæ, yet it is evident that the latter are meant, since they were also Heliasts, i. e. those who had taken the Heliastic oath, *ὀμωμοκότες ἦσαν*[4]. Æschines[5], again, in speaking of the annual review and improvement of the laws, the superintendance of which was deputed to the Thesmothetæ, and in which, as we have already seen, the Nomothetæ had a share; ascribes the institution of the custom to the legislator who founded the democracy at Athens: *οὐκ ἠμέληται* (he says) *περὶ τῶν τοιούτων τῷ νομοθέτῃ, τῷ τὴν δημοκρατίαν καταστήσαντι*—by which words who can be implied but Solon? I will not however take upon myself to determine whether the whole system and process of enacting and abrogating laws before the Nomothetæ was constituted by Solon exactly as we read of it in Demosthenes. The fragments extant in the oration against Timocrates are, as their form and style clearly evince, of later date than the age of Solon. And the same may be said [267] of all the laws which are found interspersed among the orators, scarcely any of which have retained a vestige of the antiquated phraseology peculiar to that period[6], though most of them

and sometimes to the people itself;—see Wolf, Proleg. ad Leptin. p. cxxvi. not. 123. So that private citizens may be termed *Νομοθέται* as well as the Heliasts who were elected by the people to sit as judges on these laws. Timocrates, for instance, in the oration to which he has given his name, is more than once designated by that appellation, as in p. 733: and in the passage before us, every one will at once perceive that *private* individuals, and not the public Nomothetæ, are to be understood.

[4] See Wolf, Proleg. ad Lept. not. 144. [5] Adv. Ctesiph. p. 429. extr.

[6] The oration of Lysias against Theomnestus contains some remarkable specimens of the old language in use in the time of Solon. P. 359. seq.:—*Επεγγυᾶν δ' ἐπιορκήσαντα τὸν Ἀπόλλω. δεδιότα δὲ δίκης ἕνεκα δρασκάζειν.—ὅστις δὲ ἀπείλλῃ τῇ θύρᾳ, ἔνδον τοῦ κλέπτου ὄντος.—τὸ ἀργύριον στάσιμον εἶναι, ἐφ' ὁπόσῳ ἂν βούληται ὁ δανείζων.—ὅσαι δὲ πεφασμένως πωλοῦνται, καὶ οἰκῆος καὶ βλάβης τὴν δούλην εἶναι ὀφείλειν.* (The last words are corrupt.) The explanation which Lysias thinks proper to give of the obsolete terms sufficiently proves that even in his time they were not understood by all.

are undoubtedly as old as Solon. Are we then to suppose that all traces of the ancient diction were obliterated by the orators, in order that no harshness might offend, nor obscurity retard, the hearer or reader of them; and that they purposely accommodated the style to the tastes and fashions of the day: or should we rather surmise, that when the laws of Solon were revised and arranged towards the conclusion of the Peloponnesian war[7], the obsolete expressions contained in them were substituted for more modern ones? Either supposition may be true: but it is most probable, that at the same period, and especially after the expulsion of the thirty tyrants, when many new laws were enacted, those laws of Solon which were deemed worthy of being retained, underwent certain alterations, which make it very difficult to distinguish which should be assigned to the age of Solon, and which to the Archonship of Euclides. But this is not very important to the subject before us; for it is certain that those laws also [268] which are preserved in the oration against Timocrates, and of which I began to speak, are of great antiquity, as Demosthenes himself declares, by the following testimony: *οὗτοι πάντες οἱ νόμοι κεῖνται πολὺν ἤδη χρόνον, καὶ πεῖραν αὐτῶν πολλάκις δεδώκασιν, ὅτι συμφέροντες ὑμῖν εἰσίν*[8]. But by degrees, as I have already remarked, the same system of enacting laws seems to have come into vogue as that which prevailed in passing decrees; viz. the whole body of the people used to carry them in assembly just whenever the authors of them wished it; and the injunctions of Solon respecting the Nomothetæ, though not actually rescinded, were nevertheless violated and neglected[9]. This evil, when once

[7] The oration of Lysias against Nicomachus particularly relates to this, p. 835. seq.

[8] Demosth. adv. Timocrat. p. 707.

[9] This opinion which I have expressed, that the custom of laws being enacted by the people in assembly was of *later* date, and that the appointment of the Nomothetæ was as old as the time of Solon, is directly at variance with the views of Wolf, Proleg. ad Leptin. p. cxxxiii. seq. Having

introduced into the state, was not so easily expelled: for it is a natural and almost inseparable evil in a democracy such as that which prevailed at Athens after the Peloponnesian war, consisting not in an equitable distribution of rights between all ranks of society, but in the exclusive and unlimited domination of the sovereign rabble, that none may presume to decry or object to the grossest practices, if sanctioned by the multitude, to whom all must yield, lest he be thought an enemy to the people's liberty, [269] and instead of gaining gratitude for his good intentions, ensure odium for his interference. For the above reason none were found at Athens of sufficient courage to oppose this licence in introducing new laws at the pleasure of the proposer; and there is some ground for the complaint of Demosthenes[1]: *ψηφισμάτων οὐδ' ὁτιοῦν διαφέρουσιν οἱ νόμοι· ἀλλὰ νεώτεροι οἱ νόμοι, καθ' οὓς τὰ ψηφίσματα δεῖ γράφεσθαι, τῶν ψηφισμάτων αὐτῶν ὑμῖν εἰσί.*

It is not surprising, then, from these considerations, that the number of the laws soon became so enormously increased, that it was almost impossible for any single individual to have a perfect acquaintance with them all. And hence, after a lapse of time, many had insinuated themselves into the established code, at variance or inconsistent with one another, which, by rendering the whole system of the jurisprudence doubtful and obscure, gave rise to numerous errors and caused much inconvenience

always had the greatest reliance on his authority, as indeed there are few who have not, I at first entertained great doubts of the correctness of my speculations, and re-examined more than once the whole subject with great attention. But the more diligently I weighed the various points of the question and the testimony of the orators, the more firmly persuaded I was that I had at first taken a correct view of the case. I have therefore little hesitation in submitting my opinion to the judgment of the learned, in as clear a manner and with as satisfactory proofs as I can. I should do Wolf injustice were I to suppose that he would be offended at my presuming to differ from him.

[1] Adv. Leptin. p. 485. On the explanation of the passage see Wolf, p. 310.

to the state. When, therefore, the Thesmothetæ became unequal to the task, certain persons used in the time of Demosthenes to be created out of the regular order, for the purpose of selecting all such laws, and laying them before the people, that they might determine upon repealing some and retaining others [2].

[270] Sometimes, however, Nomothetæ were also appointed on extraordinary occasions, that is, out of that regular order which we have endeavoured to describe from the remaining vestiges of the original laws. This innovation was first introduced after the expulsion of the thirty tyrants, when it was resolved to remodel, restore, and enlarge the laws of Solon, which had been in many instances rescinded and interpolated by the tyrants. For this purpose a certain body was nominated by the senate (of what number is unknown [3]) to whom was intrusted the

[2] Demosthenes alone attests this fact, adv. Leptin. p. 485. καὶ γάρ τοι τότε μὲν (i. e. whilst the institutions of Solon were in force) τέως (read ἕως: for these words are sometimes confused by the copyists, as in Olynth. 2. p. 16. 29. Ben. 24. R. where Reiske has τέως, others more correctly ἕως) τὸν τρόπον τοῦτον ἐνομοθέτουν (these words ἕως—ἐνομ. are in explanation of τότε) τοῖς μὲν ὑπάρχουσι νόμοις ἐχρῶντο, καινοὺς δ' οὐκ ἐτίθεσαν. Ἐπειδὴ δὲ τῶν πολιτευομένων τινὲς δυνηθέντες, ὡς ἐγὼ πυνθάνομαι, κατεσκεύασαν αὑτοῖς ἐξεῖναι νομοθετεῖν, ὅταν τις βούληται, καὶ ὃν ἂν τύχῃ τρόπον· τοσοῦτοι μὲν οἱ ἐναντίοι σφίσιν αὐτοῖς εἰσὶ νόμοι, ὥστε χειροτονεῖτε ὑμεῖς τοὺς διαλέξοντας τοὺς ἐναντίους ἐπὶ πάμπολυν ἤδη χρόνον, καὶ τὸ πρᾶγμα οὐδὲν μᾶλλον δύναται πέρας σχεῖν. I would not write, as Wolf suggests, in p. 310, ἐχειροτονεῖτε for χειροτονεῖτε. The present tense appears to imply, that it was an established custom at that time to create commissioners for the revisal of the laws *frequently*, and not on one particular occasion only. "It is now long" (he says) "since you have been in the habit of creating them." It is evident that this revisal was extraordinary, and peculiar to the occasion.

[3] Morus, indeed, (ad Xenoph. Hellen. ii. 4. extr.) tells us that there were twenty. "Electi sunt," he says, "viginti viri, qui restitutâ auctoritate legum Solonis et Draconis, addiderunt, si quas tempora illa necessarias fecissent." But he has misunderstood Andocides, whom he adduces, p. 39. R. 11. 16. Steph. εἵλεσθε ἄνδρας εἴκοσι· τούτους δὲ ἐπιμελεῖσθαι τῆς πόλεως, ἕως ἂν οἱ νόμοι τεθεῖεν.—ἐπειδὴ δὲ βουλήν τε ἀπεκληρώσατε, νομοθέτας τε εἵλεσθε, κ. τ. λ. It is clear that these twenty men are distinguished from the Nomothetæ. The administration of the state was entrusted to them, until, upon the establishment of the new laws, the ordinary magistrates could be appointed; and these are alluded to in the decree of Tisamenus, in Andocides, ut sup. under the title of αἱ ἀρχαί.

exclusive right of enacting laws whenever there appeared occasion. To this body the name of Nomothetæ was given. They were ordered to copy out on tablets and expose before the Eponymi for public inspection, all such laws as they had devised and drawn up, and deliver them to the magistrates who were then, by extraordinary appointment, in possession of the chief administration of affairs, before the conclusion of the month in which they had entered upon their office. These magistrates again referred them to the examination and approval of the senate and another college of Nomothetæ, in number five hundred, elected from every demus, and obliged by an oath previously to entering upon their office. Even private persons, however, [271] were allowed to have access to the senate, and communicate any thing which appeared to them useful or important on the subject of the laws[4]. There would seem, therefore, at that time to have been two kinds of Nomothetæ; one, which was appointed by the senate for the purpose of drawing up laws, and to which the annals of the Attic republic furnish no pa-

[4] The order of the transaction is thus described in the decree of one Tisamenus, in Andocid. de Myst. ut sup. *Ἔδοξε τῷ δήμῳ· Τισαμενὸς εἶπε· πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμοις δὲ χρῆσθαι τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς· χρῆσθαι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, οἷσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ. ὁπόσων δ' ἂν προσδέοι, οἱ ᾑρημένοι Νομοθέται ὑπὸ τῆς βουλῆς ἀναγραφόντων ἐν σανίσι, καὶ ἐκτιθέντων πρὸς τοὺς Ἐπωνύμους, σκοπεῖν τῷ βουλομένῳ, καὶ παραδιδόντων ταῖς ἀρχαῖς ἐν τῷδε τῷ μηνί. Τοὺς δὲ παραδιδομένους νόμους δοκιμασάτω πρότερον ἡ βουλὴ καὶ οἱ Νομοθέται οἱ πεντακόσιοι, οὓς οἱ δημόται εἵλοντο, ἐπειδὴ ὀμωμόκασιν· ἐξεῖναι δὲ καὶ ἰδιώτῃ τῷ βουλομένῳ, εἰσιόντι εἰς τὴν βουλὴν, βουλεύειν ὅτι ἂν ἀγαθὸν ἔχῃ περὶ τῶν νόμων· ἐπειδὰν δὲ τεθῶσιν οἱ νόμοι, ἐπιμελείσθω ἡ βουλὴ ἡ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται.* In the edition of Stephens (for I have not Reiske's now at hand) it is read *οἱ δὲ ᾑρημένοι Νομοθέται*. It is not easy to guess the meaning or origin of *δέ*. For my own part I suspect that it is corrupted from some numerical sign, perhaps Λ, or ΛΕ; although the villainous temerity of Petit in altering numbers has made such conjectures almost disreputable. In what follows, I apprehend with Wolf (Proleg. ad Lept. p. cxxix. not. 124.) that the words *οἱ Νομοθέται οἱ πεντακόσιοι* are correct. I should have been much inclined to wonder at Petit's egregious mistake in confounding this particular occasion of enacting laws with the ordinary annual one, had I not found it high time to leave off wondering at any thing that worthy writer asserts.

rallel example; and another, whose office was in every respect identical with those annually appointed, though the manner of their election was different. Of this latter description there is also no other instance on record. I believe, however, it will not be denied, that the appointment of Nomothetæ on extraordinary occasions, by command of the people, was a practice not altogether unknown, though of rare occurrence. [272] When, however, such an appointment did take place, it was always in a manner similar to that in which they were nominated for the ordinary and annual review of the laws. For it was very possible that in some particular emergencies, circumstances would not allow them to wait for the legitimate time for enacting and abrogating laws. If therefore any one was unwilling to set aside the institutions of Solon, and make the people supreme arbiters instead, he had nothing left but to propose an extraordinary appointment of Nomothetæ; and that this was sometimes done on certain occasions, who, even though the fact be nowhere distinctly recorded, will presume to deny[5]?

It remains for us to subjoin a few remarks on *γραφὴ παρανόμων*, which was not only applicable to decrees, but also to unconstitutional laws. In this case also there were two kinds of *παράνομα*, one relative to the method of proposing, the other to the purport of the law. The illegality in the former consisted in proposing it at the wrong time, or without having previously affixed a copy of it for public inspection before the statues of the Eponymi, or in not having waited for the third assembly in Hecatombæon, before which Nomothetæ could not properly be appointed, or in carrying it in the assembly, and not before the court of the Nomothetæ, or lastly, in omit-

[5] To this a suggestion of Demosthenes (for it cannot be called a regular motion) appears to allude, Olynth. iii. p. 31. *Νομοθέτας καθίστατε. ἐν δὲ τούτοις τοῖς Νομοθέταις μὴ θῆσθε νόμον μηδένα· εἰσὶ γὰρ ὑμῖν ἱκανοί· ἀλλὰ τοὺς εἰς τὸ παρὸν βλάπτοντας ὑμᾶς λύσατε· λέγω δὲ τοὺς περὶ τῶν θεωρικῶν, σαφῶς οὑτωσὶ, καὶ τοὺς περὶ τῶν στρατευομένων ἐνίους.* Had the orator intended to designate the regular election of Nomothetæ at the commencement of the year, he would, I think, have expressed himself otherwise.

ting any of those formularies which we have before enumerated [6]. There were, however beside these, some particular regulations prescribed for [273] certain kinds of laws, for the non-observance of which the above action (γραφὴ παρανόμων) could be instituted. And hence we are led to the true application of the remark made by Demosthenes relative to *privilegia*, that is, such laws as did not concern the whole body of the citizens collectively, but merely private individuals. A provision, the orator informs us, was made, that no law should be proposed, either to the advantage or disadvantage of any private citizen, and which did not extend to the whole people, unless with the consent and approbation of at least six thousand citizens voting secretly by ballot in the assembly [7]. And even supposing the consent of the requi-

[6] See Demosth. in Timocrat. p. 705. 707. 708. and elsewhere. This oration of Demosthenes is the chief source of our knowledge upon these subjects: but there is also a passage in that against Leptines, p. 485, which shews that Leptines himself had carried his law in the assembly, in violation of Solon's institution, and not, as he ought, before the Nomothetæ. It may however be observed, that Demosthenes alludes to the circumstance with a great appearance of circumspection and hesitation, which will not surprise any one who has read the remarks which I have just offered upon this subject. We must also remember, that this oration is a ταυτολογία, and that the orator dwells, perhaps, more briefly for that reason on the arguments which had been before adduced by Aphepsion or Phormion. See the argument of the oration, p. 454. and Wolf's Prolegomena, note 24.

[7] Demosth. adv. Timocrat. p. 719. μηδὲ νόμον ἐξεῖναι ἐπ' ἀνδρὶ θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις τιθῇ, ψηφισαμένων μὴ ἔλαττον ἑξακισχιλίων. We should undoubtedly adopt the emendation of Petit, Leg. Att. II. 1. 8. p. 188. ἐὰν μὴ ψηφισαμένων ἑξακισχιλίων, which should not have been rejected by Wesseling ad Petit, and Taylor ad Demosth. ut sup. The sense of the common reading is this: "That it be not lawful to propose any law for a private individual, unless the same apply to the state in general; and that too with the approbation of not less than 6000 citizens, giving secret votes in the assembly." It is true that the passage reads connectedly and smoothly without the addition of these words, as Wesseling remarks; but a law which is proposed applicable to a whole state, cannot be said to be proposed for a single individual; nor is it then a *privilegium*, but a general provision; whence it follows that there can be no necessity to make any peculiar and extraordinary regulations concerning it. Moreover, if we follow the common reading, no mention whatever is made of such *privilegia*. Andocides, however, shows that these were taken into consideration, though under

site number ensured, [274] the law had to be subjected to further proceedings before it was ultimately enacted. For, as the votes of the people were in fact nothing more than a permission to the author to lay his motion before the Nomothetæ, the final adoption or rejection of it rested exclusively with them [8]; and indeed it is highly probable, that such measures, interfering as they did with the regular and established system of the laws, much more frequently met with the latter than the former reception—perhaps that they were never adopted except on the most just and reasonable grounds. Again, the nature and purport of the above-mentioned provision evidently discountenances any thing like facility in bringing such laws even before the Nomothetæ, at least in the ordinary and regular manner. For, as the usual numbers of citizens who attended the assemblies did not much exceed six thousand, it is evident that the votes of so great a proportion of them could scarcely ever be [275] obtained in favour of the measure proposed. And hence Demosthenes, when he deems extreme accuracy unnecessary, in several places speaks as if such *privilegia* did not even exist in the republic of Attica [9].

the restrictions which I have mentioned above: de Myster. p. 12. (alluding doubtless to the same law which is cited by Demosthenes)—Μηδὲ ἐπ' ἀνδρὶ νόμον ἐξεῖναι θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις· ἐὰν μὴ ἑξακισχιλίοις δόξῃ, κρύβδην ψηφιζομένοις. Now the passage in Demosthenes yields precisely the same sense by the insertion of the two words ἐὰν μὴ, which might very easily have been lost from the circumstance of their having occurred just before, or from the preceding word τιθῇ. I think, therefore, that this emendation is better than that proposed by Reiske, who however in other respects has understood and explained this passage the best of all the commentators. He would merely insert the letter η; which I am inclined to reject for the additional reason that not only in Andocides, but also in this very oration of Demosthenes, p. 715. init. a similar exception commences with the same words ἐὰν μή.

[8] Reiske has understood this rightly, though he is mistaken in attributing to the people what, according to the institution of Solon, belonged to the Nomothetæ. It is manifest that the ἐπιχειροτονία of the people on *privilegia* differed only from that on the laws in general, in the fact of a certain number of votes, 6000 or upwards, being requisite.

[9] Demosth. adv. Aristocrat. p. 649. in Stephan. 2. p. 1132. which passages would be misapplied by any one who (with Taylor on the above passage in

This provision respecting privileges bears a great similarity to another, which is inserted in the same oration of Demosthenes, on those punished with infamy (*ἀτιμία*), and debtors to the treasury. This latter interdicts any proposition being made to the people relative to the restoration of the infamous to their former rights, or to the total or partial remission of debts to those who owe either to the public or the sacred treasury, unless six thousand citizens at least shall have granted impunity (*ἄδεια*) to the author of the intended proposal, by secret suffrage in the assembly: and even in this case it is enjoined that the proposal be made in strict conformity with the will of the senate and people[1]. Properly, indeed, this provision was solely applicable to psephismata: it might, however, possibly extend also to laws [276], if any were proposed of such a nature as to confer upon debtors an easy remission of their debts, or upon the infamous a ready restoration to their former rights, even without the payment of their fines. Such an one was the law of Timocrates, which Demosthenes impugns, and contends to have been illegally (*παρανόμως*) proposed, on the grounds that Timocrates neither obtained permission to consult the people (*ἄδεια*), nor proposed and recommended his bill to the senate and people previously to bringing it before the court of the Nomothetæ[2].

the oration against Timocrates), forgetful of the words of Andocides, should pronounce the clause *ἐὰν μὴ—κρύβδην ψηφιζομένοις* to be spurious.

[1] Demosth. adv. Timocrat. p. 714. seq. *μηδὲ περὶ τῶν ἀτίμων, ὅπως χρὴ ἐπιτίμους αὐτοὺς εἶναι, μηδὲ περὶ τῶν ὀφειλόντων τοῖς θεοῖς ἢ τῷ δημοσίῳ τῶν Ἀθηναίων, περὶ ἀφέσεως τοῦ ὀφλήματος ἢ τάξεως, ἐὰν μὴ ψηφισαμένων Ἀθηναίων τὴν ἄδειαν πρῶτον, μὴ ἔλαττον ἑξακισχιλίων, οἷς ἂν δόξῃ, κρύβδην ψηφιζομένοις. τότε δ' ἐξεῖναι χρηματίζειν, καθ' ὅτι ἂν τῇ βουλῇ καὶ τῷ δήμῳ δοκῇ.* The meaning of the expression *περὶ τάξεως* is explained by Ulpian in loc. p. 450. Ben. although the passage is probably imperfect or corrupt. As we now have it, Ulpian explains *ἄφεσις*, which needed no explanation, and that too in such a manner as clearly shows that the exposition properly belongs to the word *τάξις*. But something seems to have been lost.—Upon this law see Boeckh. Publ. Œcon. i. lib. iii. §. 13.

[2] Orat. adv. Timocrat. ut sup. *χρῆν σε, ὦ Τιμόκρατες, εἰδότα τὸν νόμον τόνδε, ὃν ἀνέγνων, εἴ τι δίκαιον ἐβούλου πράττειν, πρῶτον μὲν πρόσοδον γράψασ-*

There was nothing against which the proposer of a new law had more carefully to be on his guard, than lest his measure should contain anything at variance with the established laws. *Ἐναντίον δὲ νόμον μὴ ἐξεῖναι τιθέναι τῶν νόμων τῶν κειμένων μηδενί*, are the actual words of a law quoted by Demosthenes in the oration against Timocrates[3]. The custom which prevailed at Rome[4] was unknown at Athens, that a new law should invalidate an old one; as was also the ancient clause in the statutes of the former state, providing impunity if any thing should be done in consequence of that law in contradiction to others[5]. At Athens, therefore, no new law could be proposed, unless the old one was first rescinded by the Nomothetæ—and we have before seen that for this very purpose advocates were appointed by the people to defend such as were proposed to be abolished. On the other hand, it was forbidden to rescind an old law without [277] immediately substituting a new one in its place[6]. About this latter provision, however, we shall speak hereafter: the former is alleged by Demosthenes[7], in impugning the laws of Leptines and Timocrates, in a manner which makes it evident that it did not only apply to those laws which were at variance with the whole of any old law, but to those also, whose individual clauses were opposed to individual clauses in the old ones. So solicitous were the ancient legislators that the Athenian jurisprudence should in no respect be obstructed or impeded by the existence of several laws of different pur-

θαι πρὸς τὴν βουλὴν, εἶτα τῷ δήμῳ διαλεχθῆναι· καὶ οὕτως, εἰ πᾶσιν Ἀθηναίοις ἐδόκει, γράφειν καὶ νομοθετεῖν περὶ τούτων. And respecting *ἄδεια* he says a little before: *ἔγραψεν—οὐ προτεθέντος οὐδένος περὶ τούτων, οὐδὲ δοθείσης ἀδείας λέγειν.*

[3] P. 710. Compare adv. Leptin. p. 486.

[4] Livy, ix. 34.

[5] See Cicero, Ep. Att. iii. 23. Brisson de formulis, lib. ii. p. 138. and Heinecc. Antiq. Rom. i. 2. 2.

[6] Demosth. adv. Timocrat. p. 710. seq. adv. Leptin. p. 485. Compare Petit Leg. Att. p. 184.

[7] See Demosth. adv. Leptin. and adv. Timocr. ut supra.

port upon one subject; so fearful were they that the more inexperienced and ignorant citizens should be exposed to the malicious accusations of the more cunning and better versed in law, and that the judges themselves should be at a loss to distinguish right from wrong when two contending parties adduced entirely different laws in defence of the same cause.

Lastly: in proposing laws, as well as decrees, care was to be taken that they contained nothing derogatory to the majesty of the state, nothing unjust, nothing which endangered the public welfare—but on this point it is unnecessary to say more.

If a single one of these precautionary regulations was omitted or neglected by the author of a new law, he could be accused of unconstitutional measures (*παράνομα*) by any citizen who pleased[8]. The trial was held before the judges of the Heliæa, in the same manner and order, undoubtedly, as we have already indicated, in describing the accusations against psephismata: for which reason it is unnecessary here to repeat them[9]. I will merely add, [278] that the proposer of either a law or psephisma was only liable to prosecution *within* the year after proposing

[8] Demosth. adv. Timocr. p. 705. *ἐὰν δέ τις τούτων ἕν τι παραβῇ τῷ βουλομένῳ δίδωσι γράφεσθαι* (sc. *ὁ νόμος*).

[9] See chap. 2. of this Book. We must not, however, omit in this place a decree preserved by Demosthenes, de Coron. p. 261. relative to the accusation of a law of this kind:—*Ἐπὶ Ἀρχοντος Πολυκλέους, μηνὸς Βοηδρομιῶνος ἕκτῃ ἐπὶ δέκα, φυλῆς πρυτανευούσης Ἱπποθοωντίδος· Δημοσθένης Δημοσθένους Παιανιεὺς εἰσήνεγκε νόμον εἰς τὸ τριηραρχικὸν ἀντὶ τοῦ προτέρου, καθ' ὃν αἱ συντέλειαι ἦσαν τῶν τριηράρχων· καὶ ἐπεχειροτόνησεν ἡ βουλὴ καὶ ὁ δῆμος· καὶ ἀπήνεγκε παρανόμων γραφὴν Δημοσθένει Πατροκλῆς Φλυεύς. καὶ τὸ πέμπτον μέρος τῶν ψήφων οὐ λαβὼν, ἀπέτισε τὰς πεντακοσίας δραχμάς.* The words *ἐπεχειρ. ἡ βουλ. καὶ ὁ δημ.* must apparently be referred to that *ἐπιχειροτονία* of the people, by which they determined whether any law might be referred to the final decision of the Nomothetæ, or should be rejected at once, and which took place annually on the eleventh of Hecatombæon. We must, therefore, suppose that Patrocles prosecuted Demosthenes after this *ἐπιχειροτονία*, but before the session of the Nomothetæ. For it is certain that the date attached to this psephisma, the sixteenth of Boedromion, is not meant to designate the time when Demosthenes proposed his law, but that in which the psephisma itself was drawn up.

it: for after the expiration of that period, though the measure might equally be impugned, yet the author of it was *ἀνυπεύθυνος*, unaccountable, however unjust, pernicious, or contradictory to the existing laws it might appear to be[1]. This point is clear and unquestionable; doubts, however, [279] may be raised before what judges these causes were tried. It might be conjectured, from a certain law in the oration against Timocrates, that the Nomothetæ alone took cognizance of them: for it is there enjoined that none of the ancient laws shall be repealed except before that body: and that even in this case it be done only by substituting a new one in place of the old[2]. This law, however, undoubtedly relates to the regular annual review of the laws which was held at the commencement of the year, for the express purpose of abrogating old and enacting new ones: for which reason I adduced it before in describing and discussing that review. But the question is, could laws be impugned and

[1] Argum. 2. Demosth. orat. Leptin. p. 453. *Νόμος γὰρ ἦν, τὸν γράψαντα νόμον ἢ ψήφισμα μετὰ ἐνιαυτὸν μὴ εἶναι ὑπεύθυνον. ὁμῶς—καὶ οὕτω κατὰ τὸν νόμον* (*τοῦ νόμου*, or *τῶν νόμων* Taylor, which is unnecessary) *ἐξῆν ποιεῖσθαι τὰς κατηγορίας, κἂν οἱ γράψαντες ἔξω κινδύνων ὦσι.* Compare Demosth. p. 501. and Ulpian, p. 296. Ben.—Wolf, Proleg. ad Lept. p. cxxxxiii. not. 145, after proposing the opinion of which we have before spoken, that all laws which were brought in during the year were reserved till the first Prytany of the new year, to be examined by the regular council of the Nomothetæ, by whose approbation and consent they became valid; Wolf, I say, adds, that in his opinion the author of the law was not accountable, nor *ἔνοχος τῇ τῶν παρανόμων γραφῇ*, before this second scrutiny of his measure. "Quare cavi" (says he) "ne cum Petito et reliquis, quos vidi, hoc in genere dicerem, latorem indemnem fuisse exacto à lege latâ anno." I cannot coincide in this opinion of the learned writer. For, in the first place, the passage in the argument of the oration against Leptines, which is the only evidence on which we have to depend, states no more than what Petit asserts, p. 183: so that we may retort upon Wolf what he urged against Petit, "vellem sententiam suam uno antiquo teste probasset." In the next place, the assertion of the author of the argument, that the same held good for the proposers of psephismata, sufficiently shows that Petit has understood him correctly. For what could the court of the Nomothetæ have to do with psephismata? And lastly, the opinion of Wolf, which appears to have given rise to this explanation, is, as I have before endeavoured to show, sufficiently improbable.

[2] Demosth. adv. Timocrat. p. 710. I have already given the law itself.

repealed at no other time than this regular session of the Nomothetæ? The oration of Demosthenes against Leptines (the only one now extant of the kind) renders such a supposition untenable. For in that oration we find that a certain law for withdrawing all immunities previously granted, is impugned, though the author, Leptines, is no longer liable to a prosecution, because the prescribed term of a year had expired since its proposal. [280] Yet this cause was most unquestionably tried before the Heliasts, and not before the Nomothetæ[3].

It seems, therefore, that we must come to this conclusion: that the *old* laws (that is, those which had been established by long use) could not be abrogated or changed except before the Nomothetæ at one particular time of the year; but that the more *recent* ones, which had been in force for a brief period only, could be impeached in the Heliæa by any one and at any time—a conclusion which precisely agrees with the case of Leptines' law[4]. Trials, therefore, of this kind appear to have differed from the other *ἀγῶνες παρανόμων* in these two respects alone; viz. first, that the author was liable to no penalty, though the law was condemned—since it was the latter only which was prosecuted, and not the former: and secondly, that advocates (*σύνδικοι*) were appointed by the people for that very reason to undertake the defence of the impugned law at the trial; although it is exceedingly probable that the author of it was himself elected one of the number[5]. The reason why Demosthenes, while he accuses the law of Leptines, at the same time proposes to the judges a better substitute himself, which he pledges to introduce in its place,

[3] This is satisfactorily proved by Wolf, Proleg. p. cxxxxi. not. 144.

[4] For it is highly probable, that it was proposed the year before the accusation was brought. See Wolf, Proleg. p. lxiii. seq.

[5] Demosthenes mentions *four* *σύνδικοι* of Leptines' law having been nominated by the people, p. 501—3; but as in other similar cases the number is always *five*, Wolf infers that Leptines himself made the fifth, with whom I perfectly agree. See Proleg. p. cxxxxv.

seems to be rather to induce the judges, by the prospect of having a more useful law enacted instead, to repeal that to which he objects, than because such a substitute was required to be proposed at the trial in the same manner as before the Nomothetæ. It must not be supposed, that upon the rejection of Leptines' law, his own immediately [281] became valid instead; but that it was still necessary to wait for the regular session of the Nomothetæ, before whom alone new laws could be proposed, and to whose notice Demosthenes promises the judges that his own shall be presented [6]. And here we will conclude our remarks upon the laws.

CHAPTER VIII.

On War, Peace, Confederacies, and Commerce with other Nations.

We must now offer to the notice of the reader a few brief remarks upon the *third* of those subjects which we before stated were discussed and determined by the people in assembly. Under this head we shall comprise war, peace, confederacies, and general intercourse with foreign states—over all which matters the body of the people have, in democratical states, the exclusive control. There is, however, in this department of state affairs,

[6] See Demosth. p. 487. and 498. As to his assertion in p. 487. *τοῦ νόμου λυθέντος, τὸν παρεισενεχθέντα κύριον εἶναι σαφῶς ὁ παλαιὸς κελεύει νόμος.* I am inclined to imagine that this *παλαιὸς νόμος* related only to those laws which were proposed before the Nomothetæ. And hence Demosthenes declares his reluctance to have recourse to this law, "lest," says he, "any one should contradict me upon it." If, we may ask, this law really enjoined that when one law was repealed by the judges, its substitute immediately became valid, what was the use of the authority of the Nomothetæ? It is much more probable, that when any law was repealed by the judges, the old ones, if any such had been abrogated by that law, resumed their authority till a new one could be substituted before the Nomothetæ.

nothing very recondite or requiring elaborate and copious elucidation. No one, who has read even Thucydides alone, or a few of the Philippics of Demosthenes, will be ignorant that at Athens [282] neither war could be declared, nor armies raised, nor the command of them conferred upon any general, except by the express command of the people. It was the people that determined the number of the soldiers and the magnitude of the fleets to be sent out; the classes from which the levies should be made[1], whether citizens, aliens, allies, or slaves; the amount of pay to be given to the soldiers, and from what source it should be derived[2]; how many, and at what price, mercenaries should be engaged[3]. To the people also the generals regularly sent due notice by letters of all their motions; from them they requested, by the same means, the necessary supplies, and desired to know their further pleasure in all cases; and these letters were read by the scribe to the people in assembly[4].

With the people, again, rested the appointment of ambassadors[5]; they assigned, in a decree, the duties which they were deputed to perform[6], and determined the amount of their salary[7]. And the latter, on their return, related the result of their embassy first to the senate, and afterwards to the assembly of the people[8]. The

[1] See Isocrat. Social. p. 400. Demosth. Philipp. i. p. 45—6.

[2] Demosth. Philipp. i. p. 48. with which compare Thucyd. v. 47. vi. 31. Upon the different amounts of the soldiers' pay in general, see Meursius, Lect. Att. ii. 8. Petit, Leg. Att. p. 662. Lips. de Milit. Rom. v. 16. Boeckh, Publ. Econ. i. p. 131.

[3] Aristoph. Acharn. v. 158. 169. and Schol. ad Plut. v. 173. Boeckh, ut sup. p. 291.

[4] Thucyd. vii. 10.

[5] Æschin. de Fals. Leg. p. 201. 202. and elsewhere. Sometimes, however, the senate were authorized by the people to appoint ambassadors. Demosth. de Coron. p. 249, 250.

[6] Æschin. p. 231. 275. Of this kind is the celebrated decree of Demosthenes, de Coron. p. 288.

[7] Or journey-money, ἐφόδιον: see Aristoph. Acharn. 65. Demosth. de Fals. Leg. p. 390. Boeckh, p. 255.

[8] Æschin. p. 211. and compare p. 227—231.

same may be said also [283] of those who were sent to the meeting of the Amphictyons, the Hieromnemones and Pylagoræ[9].

Even the ambassadors from foreign states had access first to the senate, which, after being informed of the object of their arrival, and having drawn up a previous bill (*προβούλευμα*), introduced them to the people in the assembly. The latter, having heard the commission with which they were charged, and learnt the opinion of the senate, now turned their attention to the different schemes, proposals, and advice tendered by the orators; and having drawn up a decree in conformity with what they judged the best counsel, presented it by way of answer to the ambassadors[1]. They moreover determined upon the honours to be conferred upon the latter, if any such were deemed expedient; as, for instance, a seat on the front tiers of benches in the theatre (*προεδρία*), maintenance in the town hall (*σίτησις ἐν πρυτανείῳ*), and similar privileges[2]. We are told by Julius Pollux, that the third of the regular assemblies was properly devoted to the audience of ambassadors—upon which statement I have already made some remarks[3].

Moreover, the people, as we have said, had the power of making peace, alliances, and treaties with other nations. For they considered in assembly the terms offered by, or to be offered to, the enemy; [284] and when these had been agreed upon to the satisfaction of both parties,

[9] On these offices see Tittmann de Amphictyonibus, p. 83. seqq. His statement that the office of Hieromnemon was perpetual derives some confirmation from a passage of Plutarch, An seni gerenda respubl. p. 794. *καθάπερ ἦν σὺ νῦν Ἀθήνῃσι μεταχειρίζῃ τῆς ἐξ Ἀρείου πάγου βουλῆς ἐπιστασίαν, καὶ νὴ Δία τὸ προσχῆμα τῆς Ἀμφικτυονίας, ἣν σοὶ διὰ τοῦ βίου πάντος ἡ πατρὶς ἀνατέθεικε*: for these words, I apprehend, apply to the office of Hieromnemon. That the affairs of the Amphictyons were discussed in assembly is clear from Æschines adv. Ctesiph. p. 516. seq.

[1] Pollux, viii. 96. Æschin. de Fals. Leg. p. 238—9. Thucyd. v. 45. Orat. de Halones. p. 80. and elsewhere.

[2] Æschin. adv. Ctesiphont. p. 466—7.

[3] Book i. chap. 1.

they appointed certain persons to conclude and ratify them by oath in the name of the people, and sent others to receive a mutual engagement from the enemy[4]. To these should be added that peculiar kind of treaties called *σύμβολα*, or conditional agreements with foreign nations, those especially with which Athens had more frequent intercourse, concerning the giving and receiving rights between the citizens of each, or, to use the expression of Livy, *juris præbendi repetendique commercium*[5]. For it must be remembered, that although the *technicalities* of such treaties, as the office of drawing up and ratifying them, belonged at Athens to the Thesmothetæ and the judges, yet they could not be entered into at all except by the permission of the people[6]. If, however, any foreign state had refused these rights to the citizens of Attica, or been guilty of any hostilities towards them, yet not of sufficient extent to authorize a declaration of war; there were certain methods of reprisal, such as *ἀνδρολῆψίαι*, *σῦλαι*, and others, (now called *Repressalia*), to which recourse could be had against the offending party, and for which provision was either made by the laws or the *jus civile*, or else resolutions were passed by the people adapted to each particular occasion[7]. The people had also [285] the right of determining in assembly concerning the spoils (*σῦλαι*) which had been captured in war, whether they had been taken lawfully or otherwise, and whether they should be restored or retained[8].

[4] Specimens of the *form* of these treaties will be found in Thucydides, iv. 118. v. 18, 19. 23. 47.

[5] On these *σύμβολα*, see Harpocrat. in v. and Valesius, p. 178. 332. Compare also Spanheim, Orb. Rom. ii. cap. 17. and, above all, Hudtwalcker, de Diætet. p. 123.

[6] Orat. de Halones. p. 78. Compare Pollux, viii. 88. Petit. Leg. Att. p. 676.

[7] See Hugo Grotius de Jure Belli et Pacis, iii. 2. p. 1045. ed. Becman. (Frcft. 1699.) On *ἀνδρολῆψία*, or *ἀνδρολήψιον*, see Petit, Leg. Att. p. 622. seq.; and on *σῦλαι*, or *σῦλα*, see the second argument to the oration of Demosthenes against Timocrates, p. 695. Vales. ad Harpocrat. p. 177.

[8] Demosth. adv. Timocrat. p. 703. 23. Cf. Liban. Argum. p. 694. 20.

Lastly, the people decided upon the disposal and treatment of all who had been conquered or surrendered themselves in war. In illustration of this, I shall instance the celebrated case of the Mitylenæans, in the time of the Peloponnesian war, part of whom were by order of the people put to death, and part compelled to surrender their territory to the occupation of colonists from Attica. Thucydides has given a copious account of the manner in which this case was discussed and determined in the assembly[9]. The tribute of the allies was also a subject of which the people had the decision. These were originally defined by Aristides, to whom the people had deputed the task at the request of the allies themselves; but they were afterwards increased at the recommendation of Alcibiades, by a body of ten commissioners, of whom Alcibiades himself was one. And if any of the allies petitioned for a diminution or remission of their tribute, the propriety of granting it was taken into consideration at the assembly, as we might safely infer, even if there were no examples to prove it[1]. But on a subject involving so little doubt or uncertainty we have already said enough: we will proceed to the discussion of the next question.

[9] Thucyd. iii. cap. 36—49.

[1] Demosth. in Theocrin. p. 1333—4. Compare Æschines, adv. Ctesiph. p. 492.

CHAPTER IX.

On the Revenues, and their management and disposal, as far as related to the Assemblies.

[286] The ordinary revenues of the republic of Attica were derived from three principal sources; taxes, of which there were many different kinds; fines and confiscations, which accrued either to the public or the sacred treasury; and tributes of the allies, which were originally kept at Delos, under the immediate control of the allies themselves, but were subsequently removed to Athens and appropriated to the exclusive use of the Athenians[1]. The above sources of the revenues are comprised by Aristophanes[2] in the following verses:—

> Καὶ πρῶτον μὲν λόγισαι φαύλως, μὴ ψήφοις ἀλλ' ἀπὸ χειρὸς,
> Τὸν φόρον ἡμῖν ἀπὸ τῶν πόλεων ξυλλήβδην τὸν προσιόντα·
> Κἄξω τούτου τὰ τέλη χωρὶς, καὶ τὰς πολλὰς ἑκατοστὰς,
> Πρυτανεῖα, μέταλλ', ἀγορὰς, λιμένας, μισθοὺς καὶ δημιόπρατα.
> Τούτων πλήρωμα τάλαντ' ἐγγὺς δισχίλια γίγνεται ἡμῖν.

The τέλη here mentioned are the tributes of the resident aliens and freedmen, the duties on the different arts, and similar exactions. The ἑκατοσταὶ appear to have been certain harbour duties collected in the Piræus, although mention is more commonly made [287] of the πεντηκοστὴ, or tax of a fiftieth. The poet enumerates ἀγοραὶ and λιμένες, because a duty was imposed in the markets and harbours on goods sold, imported, or exported. Μισθοὶ, I apprehend, are what other writers denominate μισθώματα or μισθώσεις, the rents of houses, lands, pastures, and other public pro-

[1] On the whole subject of the Athenian revenues, the reader must consult the valuable work of Boeckh on the Public Economy of Athens, i. p. 320. seqq. My reason for not mentioning the Liturgies in this place will be evident to all. Οὐ γὰρ κοινωνεῖ ταῖς δημοσίαις προσόδοις καὶ περιουσίαις ταῦτα ταναλώματ' οὐδέν, as Demosthenes observes, adv. Leptin. p. 464.

[2] Vesp. v. 654.

perty, which were let to, and farmed by, private individuals. *Πρυτανεῖα* are certain sums deposited by litigants before a trial, and corresponding to the Latin *sacramenta*. *Δημιόπρατα* are confiscated property, the proceeds of which, when sold, accrued to the treasury: the remaining terms require no explanation.

A certain scribe called *ἀντιγραφεὺς*[3] regularly drew up the accounts of these revenues, and laid them before the people every Prytany; in the first assembly of which the lists of confiscated property were also read. We are told, too, by Julius Pollux[4], that notice was then given of all inheritances which had been entered upon during the previous year—evidently with the view of making it publicly known to what individuals the property demised had descended.

It cannot be doubted that the entire control and management of these various revenues was vested exclusively in the people. For if on any occasion some project was proposed either for acquiring new supplies, or increasing [288] or in any way altering the old, who but the people can we suppose to have decided upon the matter, even though we are nowhere expressly assured that such was the case? We have already seen that the tributes of the allies were included in the business of which the people assumed to themselves the direction in assembly: and why should they not have had the same power over the taxes, the harbour duties, and similar sources of revenue? especially since they indisputably had the regulation of the coinage[5], the weights and measures[6], the import-

[3] Æschin. adv. Ctesiph. p. 417. *Ἀντιγραφεὺς ἦν χειροτονητὸς τῇ πόλει, ὃς καθ' ἑκάστην πρυτανείαν ἀπελογίζετο τὰς προσόδους τῷ δήμῳ.* But in the age of Æschines and Demosthenes, the duties of the *ἀντιγραφεὺς* wholly devolved on the steward of the Theorica, *τῷ Ταμίᾳ τῶν θεωρικῶν*, until the original practice was restored, as it appears by a law of one Hegemon. See Petit, Leg. Att. p. 341. Taylor ad Æschin. ut sup.

[4] Pollux, viii. 95.

[5] Aristoph. Ran. v. 732. Eccles. v. 815. Athenæus, xv. c. 9. p. 438. Schweigh. See also Boeckh, ii. p. 136.

[6] There is a decree upon this subject among Boeckh's Inscriptions, xix. Tab. viii.

ation, exportation, and sale of merchandise[7]; and the right of determining upon the admission or exclusion of strangers to or from the harbours of Attica[8], and upon many other things of a similar nature. Now we may fairly infer, that if the people had the management of the various affairs just enumerated, they had likewise the management of *all* of the like description.

As to fines, these were imposed not only by sentence of court or by the senate, but also occasionally by the people, in as much as the latter sometimes took cognizance of certain crimes in the assembly. Fines, however, when once imposed, could only be remitted by the people; nor could a remission even be proposed to them in assembly, unless leave (*ἄδεια*) had been previously granted to the proposer by the secret votes of not less than six thousand citizens[9]. If the debtor himself had presumed to petition for such remission, [289] either in the senate or the assembly, without having obtained leave to do so, the laws enjoined that he should be impeached by *ἔνδειξις*, in the manner of those who had got themselves appointed judges when in debt to the public treasury. If some intercessor in behalf of the debtor had preferred the same unauthorised petition, his whole property was confiscated; and the Proedrus who had allowed the people to vote upon such an occasion, was pronounced infamous, *ἄτιμος*[1].

If at any time the ordinary revenues were insufficient for the exigences of the state, and it was deemed requisite in consequence to have recourse to some extraordinary means of supplying the treasury—a thing of not

[7] Demosth. de Fals. Leg. p. 433. See Boeckh, i. p. 58, 59. There is great obscurity in the passage of Aristophanes, Eccles. v. 814. *οὐκ οἶσθ' ἐκεῖν' οὕνδοξε, τὸ περὶ τῶν ἁλῶν*; the remark of the Scholiast is brief: *ἐψηφίσαντο γὰρ αὐτοὺς εὐωνοτέρους εἶναι, καὶ τὸ ψήφισμα ἄκυρον γέγονε.*

[8] Thucyd. i. 139. Plutarch, Pericl. cap. 30. Diodor. xii. cap. 39.

[9] The words of the law, from Demosth. adv. Timocrat. p. 714, 715, I have already given in chap. vii.

[1] This law, or rather a part of the former law, is extant in Demosth. p. 716. See Petit, Leg. Att. p. 470.

unfrequent occurrence in time of war; in such an emergency it was the duty of the people to discuss and determine in assembly what expedients should be adopted as the most effectual means of removing the difficulty. Thus we read that one Pythocles recommended the people to buy in all the lead at the market price, and, having thus secured the monopoly, to sell it out for three times as much, as a means of increasing the funds of the treasury[2]. Similarly too the people, at the instigation of Iphicrates, imposed upon proprietors of houses a certain duty on all upper stories projecting into the street, and all doors opening upon the public[3]. Sometimes the state circulated a coinage of low value, and authorised it to pass current at a higher rate than it was intrinsically worth. This also they intended as a subsidy to the treasury, by compelling all the citizens and resident aliens to make use of it in their commerce with each other within the city and the limits of the empire, for a definite period at least. Thus, for example, in the archonship of Callias, a copper coin appears to have been struck as an equivalent for one of silver[4]. The people, moreover, [290] sometimes imposed upon the allies the payment of additional sums of money; as we read in the oration against Theocrines, that ten talents were exacted from the Melians, under pretence of fining them for having given refuge to certain pirates. The decree was in this case proposed by one Mœrocles[5]. But in time of war

[2] Aristotle, or rather the author of the Œconomics, ii. 36.

[3] Polyæn. iii. 9. 30.

[4] To this the following passage in Aristophanes refers. Eccles. v. 810. seq.

> —— Β. τοὺς χαλκοῦς δ' ἐκείνους ἡνίκα
> ἐψηφισάμεθ', οὐκ οἶσθα; Α. καὶ κακόν γέ μοι
> τὸ κόμμ' ἐγένετ' ἐκεῖνο· πωλῶν γὰρ βότρυς
> μεστὴν ἀπῆρα τὴν γνάθον χαλκῶν ἔχων·
> ἔπειθ', ὑπέχοντος ἄρτι μου τὸν θύλακον,
> ἀνέκραγ' ὁ κήρυξ, μὴ δέχεσθαι μηδένα
> χαλκοῦν τὸ λοιπὸν, ἀργυρῷ γὰρ χρώμεθα.
>
> See Boeckh, ii. p. 136.

[5] P. 1339.

the most frequent method of supplying the deficiency of the treasury was by imposing a property-tax, called εἰσφορὰ, to be paid by all (except the lowest class, who were not rated by their property), whether citizens or aliens, according to the amount of their fortunes, and divided into certain companies called Symmoriæ; the exact nature of which, hitherto but imperfectly understood, has lately been fully and admirably explained by Boeckh[6]. This tribute, then, was on such an occasion enjoined by the people in assembly, who also assigned the amount required[7], and, as it would seem, appointed certain exactors, called ἐκλογεῖς[8], to enforce the payment of it. These officers had likewise to apportion to each citizen the precise sum which fell to his share to contribute, as we are informed by Suidas; [291] for to that effect I conceive the following passage should be interpreted: ὁπότε δέοι χρήματα τοὺς πολίτας εἰσφέρειν, τούτους κατὰ δύναμιν (each in proportion to his own resources) οἱ καλούμενοι ἐκλογεῖς διέγραφον[9]. The division of the citizens into classes according to their fortune, devolved upon the Strategi[1]. The method, however, and system of making this division was not always the same. If any one conceived that an improvement could be introduced, he was at liberty to propose to the people a law to that effect, which, if deemed worthy of consideration, it was necessary for him to submit to the further inspection and approbation of the Nomothetæ,

[6] Publ. Econ. ii. p. 29—79.

[7] Vid. Demosth. in Polycl. p. 1208. Aristoph. Eccles. v. 818.

Τὸ δ' ἔναγχος οὐχ ἅπαντες ἡμεῖς ὤμνυμεν
τάλαντ' ἔσεσθαι πεντακόσια τῇ πόλει
τῆς τεσσαρακοστῆς, ἣν ἐπόρισ' Εὐριπίδης;

where the Scholiast informs us: οὗτος ἔγραψε, τεσσαρακοστὴν εἰσενεγκεῖν ἀπὸ τῆς οὐσίας εἰς τὸ κοινόν.

[8] See Suidas in v. Demosth. adv. Androt. p. 611. in Polycl. p. 1209.

[9] Others, however, and Suidas himself in ἐπιγνώμονες, ἐπιγραφεῖς, διαγραφεῖς, διάγραμμα, assert that this was the office τῶν ἐπιγραφέων, or διαγραφέων. See Boeckh, i. p. 169. May not, however, the same magistrate have been variously designated according to the various duties which he performed?

[1] See Wolf, Proleg. ad Leptin. p. xciv.

as above described by us in treating of the method of enacting and repealing laws. And the same holds good of the other kind of extraordinary liturgy, the trierarchies; for that εἰσφορὰ must be considered as an extraordinary service, is well known. The performance of these trierarchies was also regularly defined by law; and any alteration or improvement in the system could be suggested to the people just as in the rest of the laws[2].

[292] A distinction, however, must be made between the above compulsory duties, appointed and enforced by law, and the voluntary contributions called ἐπιδόσεις. It was usual, whenever a larger expenditure was required than the state of the finances seemed to justify, for the Prytanes to convene an assembly, where, after stating to the people the inability of the treasury to furnish the requisite sum, they exhorted them to aid the commonwealth by voluntary subscriptions proportioned to the amount of their respective fortunes. Upon this such as were willing to contribute, used to rise and specify with a loud voice the amount of the donations they proposed to give; while others who were more tardy, or whose love of money appeared at least as strong as that of their country, were urged, exhorted, and implored to follow the example set them by their more zealous fellow citizens. Those who resolved to give nothing, either remained silent or sneaked away from the assembly[3]; for their reluctance could not, of course, in a contribution professedly voluntary, be

[2] Most of my readers will have some acquaintance with the oration of Demosthenes, *De Symmoriis*, which is the oldest of his deliberative orations; although it does not contain the actual law upon the subject, but appears to have been rather designed to sound the feelings of the people, and prepare them for a measure which Demosthenes probably intended to propose, but eventually did not. For a law on the trierarchies which is recorded de Coron. p. 261—2, is a widely different, and much later one, it having been carried Ol. 110½, while the oration *de Symmoriis* was written Ol. 106. 3. See Boeckh. ii. p. 112. seq.

[3] See the Characters of Theophrastus, cap. 22. and Casaubon. Compare Plutarch, Alcib. cap. 10. Phocion, cap. 9. Athenæus, iv. cap. 19.

overcome by compulsion. The names of those who engaged to subscribe, together with the amount promised, were copied upon tablets and exposed before the statues of the Eponymi, until payment of the sum[4].

It is but natural to infer that the people also took into consideration at their assemblies the entire question of the management, disposal, and use of the public finances: we will however adduce a few examples in illustration of the fact. First, then, we find in the oration of Lysias against Ergocles[5], that the people demanded from the generals an account of all money which had been exacted from the allies. [293] We know too from Plutarch[6] that Pericles was ordered by the people to give in his accounts—though neither of these instances are to be considered as ordinary cases. Generally, every magistrate, and every one holding a post in any way connected with the management of the public money, was required at the expiration of his appointment to give an account of his administration to the Logistæ. It might indeed sometimes happen that the Logistæ deemed it advisable to consult the people upon these accounts, if any question arose upon which they did not consider themselves competent to determine. This however appears to have but seldom happened; and whenever we read of the people demanding that an account should be given in

[4] Isæus de Dicæogen. hered. p. 54. 38. Κληθεὶς ὑφ' ἑτέρου, ἐπέδωκεν ἐν τῷ δήμῳ τριακοσίας δραχμὰς, ἔλαττον ἢ Κλεωνυμος ὁ Κρής. (this individual was probably some *μέτοικος* or *ἰσοτέλης*.) καὶ τοῦτο ἐπέδωκεν, οὐκ εἰσήνεγκεν· (fort. ἐπέδωκε μὲν, οὐδ' εἰσήνεγκεν.) ἀλλ' ἐπ' αἰσχίστῳ ἐπιγράμματι ἐξ ἑτέρου αὐτοῦ τοὔνομα ἔμπροσθεν τῶν Ἐπωνύμων. The words ἐξ ἑτέρου are corrupt; and either something is lost, or we should write ἐξετέθη, or ἐξέκειτο. I do not know what alteration Reiske has suggested, as I have not his edition at hand.

[5] P. 179. 41. Ὑμεῖς ἐψηφίσασθε τὰ χρήματα ἀπογράψαι τὰ ἐκ τῶν πόλεων εἰλημμένα, καὶ τοὺς ἄρχοντας τοὺς μετ' ἐκείνου (Θρασυβούλου) καταπλεῖν εὐθύνας δώσοντας. These ἄρχοντες appear to have been the secretaries, or treasurers, ταμίαι, who used to accompany generals. See Demosth. de Chersones. p. 101. in Timoth. p. 1187.

[6] Plutarch, Vit. Pericl. cap. 32.

either to themselves or the Logistæ, we must consider it an extraordinary case[7].

[294] It cannot be doubted, and would be superflous to prove by examples[8] that the people decided in all matters relating to public works, such as the docks, the harbours, the walls, the fortifications, the construction and repair of public roads, the temples, the theatres, the gymnastic schools, and all similar edifices. One point, however, is worthy of notice, which is, that the architects themselves appear to have laid before the people the plans, estimates, and descriptions which they had drawn up for any projected public work. Valerius Maximus[9] relates of Philo, the architect of the beautiful arsenal at Athens, that he gave an account of his plans in the theatre (i. e. to the people assembled there), and explained them with such eloquence, that the Athenians,

[7] This seems capable of confirmation at least from the authority of Ulpian, small as it is, who remarks on Demosth. de fals. leg. p. 246. 377. Ben. Λογισταὶ ἐκαλοῦντο οἱ εἰσάγοντες ἐν τῷ δήμῳ τοὺς ὑπευθύνους. It is, however, more probable that the worthy commentator has confounded δῆμος and δικαστήριον: for Demosthenes in the above passage mentions the latter only. Were I convinced of the invariable accuracy and propriety of the expressions used by Plutarch, I should quote as testimony a circumstance which he relates of Pericles, cap. 23. Τοῦ δὲ Περικλέους ἐν τῷ τῆς στρατηγίας ἀπολογισμῷ δέκα ταλάντων ἀνάλωμα γράψαντος, ἀνηλωμένων εἰς τὸ δέον, ὁ δῆμος ἀπεδέξατο, μὴ πολυπραγμονήσας, μηδ' ἐλέγξας τὸ ἀπόρρητον. If, however, Plutarch be really correct in this passage, something must have been done similar to what I before remarked might occasionally have taken place.

[8] Compare Æschines, in Timarch. p. 104. a passage which has been misunderstood by Meursius, de Areopag. cap. 4. That writer tells us, that in later times the Areopagites were compelled by a decree of Timarchus to refer certain matters to the decision of the people, and that their power was thereby diminished. But the decree of Timarchus was evidently not a general one; for he had merely proposed to consult that court upon the repair of certain edifices around the Pnyx, and that the result of their opinion should be laid before the people. The decree therefore had no reference whatever to the general power and privileges of the Areopagus. The reader may examine the passage itself:—τῆς βουλῆς τῆς ἐν Ἀρείῳ πάγῳ πρόσοδον ποιουμένης πρὸς τὸν δῆμον κατὰ τὸ ψήφισμα τὸ τούτου, ὃ οὗτος εἰρήκει περὶ τῶν οἰκήσεων τῶν ἐν τῇ πνυκί, κ. τ. λ.

[9] Lib. viii. cap. 12. Extern. n. 2.

themselves the most eloquent nation in the world, extolled his proficiency in oratory as much as his genius in art. The same writer also relates the following anecdote of the statuary Phidias. The Athenians listened with great patience in the assembly to his arguments, whilst he recommended that the statue of Minerva should be made of marble rather than of ivory, on the grounds that the former would be susceptible of a more durable polish. When, however, he ventured to hint that it would be much cheaper too, they instantly bid him hold his tongue[1].

[295] Generally speaking, the people alone could sanction any expenditure out of the treasury. In proof of this, it will be sufficient to adduce two inscriptions lately published by Boeckh[2]. One is a psephisma, apparently of Ol. 90½, by which the Prytanes and Senate are ordered *ἀποδοῦναι τοῖς θεοῖς τὰ χρήματα τὰ ὀφειλόμενα, ἐπειδὴ τῇ Ἀθηναίᾳ τὰ τρισχίλια τάλαντα ἀνενήνεγκται ἐς πόλιν, ἃ ἐψήφιστο, νομίσματος ἡμεδαποῦ. Ἀποδιδόναι δὲ ἀπὸ τῶν χρημάτων, ἃ ἐς ἀπόδοσίν ἐστιν τοῖς θεοῖς ἐψηφισμένα, τά τε παρὰ τοῖς Ἑλληνοταμίαις ὄντα νῦν, καὶ τἄλλα, ἅ ἐστι τούτων τῶν χρημάτων, καὶ τὰ ἐκ τῆς δεκάτης, ἐπειδὰν πραθῇ.———Ἐπειδὰν δὲ ἀποδεδομένα ᾖ τοῖς θεοῖς τὰ χρήματα, ἐς τὸ νεώριον καὶ τὰ τείχη τοῖς περιοῦσι χρῆσθαι χρήμασιν.*

The other inscription contains an account of monies paid Ol. 92. 3. by the keepers of the sacred treasury of Minerva, partly to the Hellenotamiæ for the pay of the knights and for the diobelia or Theoric distribution, partly to the Athlothetæ and Sacrificers (*ἱεροποιοῖς*) for the celebration of festivals and the performance of sacred rites, and partly to the generals for the purposes of war: and all these monies are said to be expended by the command of the people, *ψηφισαμένου τοῦ δήμου.*

[1] Id. lib. i. cap. 1. Extern. n. 8.

[2] Inscript. i. Tab. 1. and Inscript. iii. Tab. 2. See Boeckh's Commentary, Tom. ii. p. 161—182. and p. 198—205.

But, as there were certain kinds of expenditure defined by law, not of uncertain occurrence, but necessarily recurring at particular stated periods,—to provide, for example, the feasts and sacred ceremonies[3], to furnish the theorica, and the pay of the knights, [296] the courts, the senate[4], and the assemblies—there can be no doubt that certain revenues were peculiarly assigned to meet this expenditure, and certain sums regularly required every year from the various treasurers, so as to render it unnecessary for the people to sanction every such periodical payment by a formal decree[5]. And there is

[3] See Lysias in Nicomach. p. 184. 36. Boeckh, i. p. 227. A distinction, however, must be made between ordinary and extraordinary sacred rites, the expense of which was necessarily always decreed by the people. I am in doubt, too, respecting the ἑορταὶ ἐπίθετοι, whether the expense incurred by them was defined by the laws.

[4] On these and other payments (many of the subordinate offices which Demosthenes calls ἀρχίδια being mercenary), see Boeckh i. p. 244. seqq. The people, no doubt, voted by a special decree the extraordinary salaries of ambassadors, Nomothetæ, &c. See above, chapters vii and viii.

[5] Boeckh has shown that the Colacretæ, who distributed the pay to the Dicasts, were separately supplied with money for that purpose: i. p. 186. 385. We are not informed from what sources the pay of the senate and the assemblies was derived. Our inscription alone proves that the pay of the knights and the Theoric distributions was furnished by the treasury in which the tribute of the allies was deposited, and of which the Hellenotamiæ had the care. We cannot be surprised that this treasury was exhausted at that time, when all the allies had withdrawn their allegiance. But in later times, the office of the Hellenotamiæ was abolished, and the Masters of the Theorica (οἱ τῶν θεωρικῶν ἄρχοντες) appointed instead. These latter had also a treasury of their own, which was better or worse supplied according to circumstances; for its returns were dependant on the administration of the finances, ἐκ τῆς διοικήσεως. The people moreover had the option of applying the surplus to the purposes of war, or to giving donations; vid. Demosth. in Neær. p. 1346. Boeckh. p. 194. It follows of course that these donations were larger or smaller, and more or less frequent, as it might happen : they were distributed κατὰ δήμους, (vid. Demosth. in Leochar. p. 1191.) but whether in the assembly or elsewhere I am in doubt. That the former was the usual place is not by any means proved by the passage of Æschines to which Boeckh refers, p. 237 : ἀπέρχεσθε ἐκ τῶν ἐκκλησιῶν οὐ βουλευσάμενοι, ἀλλ' ὥσπερ ἐκ τῶν ἐράνων, τὰ περιόντα νειμάμενοι, adv. Ctesiph. p. 642. Τὰ περιόντα are what is left by the avarice and rapacity of the demagogues. But why should we not suppose allusion to be made to the pay for attendance at the assembly?

nothing in the decree we have quoted above which tends to controvert this opinion. [297] There is no doubt that the sums allowed to the Hellenotamiæ, the ἱεροποιοὶ, and the generals, from the treasury of Minerva, were granted by an extraordinary edict of the people, because the treasuries which ought to have furnished the monies required happened at that time to be exhausted.

CHAPTER X.

On the Sacred Rites and Religious Affairs of the State.

This also was a subject of which, as we are informed by Julius Pollux[1], the people had the direction in their assemblies. The Grammarian, after enumerating the various kinds of business assigned to the first three ordinary assemblies in the Prytany, tells us that they discussed περὶ ἱερῶν καὶ ὁσίων, in the fourth. This expression, περὶ ἱερῶν καὶ ὁσίων, is unmeaningly interpreted *de sacris et sanctis.* The ancient writers, it should be observed, designate by the combined words ἱερὰ καὶ ὅσια, every thing either sacred or profane, divine or human, in which the citizens collectively participate[2], and of which the advantages, protection, or

[1] VIII. 96.

[2] Thus, for example, in a decree cited by Demosth. or in Neær. p. 1380, we read: καὶ μετεῖναι αὐτοῖς, ὥνπερ Ἀθηναίοις μέτεστι, πάντων, καὶ ἱερῶν καὶ ὁσίων. And similarly in the oath of the Ephebi, (Pollux, viii. 105). Ἀμυνῶ δὲ καὶ ὑπὲρ ἱερῶν καὶ ὑπὲρ ὁσίων. Taylor has collected a great number of instances, ad Æschin. adv. Timarch. p. 48. The word ὅσιος has various significations, which we may arrange as follows:—Properly, ὅσιον is whatever may be lawfully and harmlesly done; a thing which may be put to private and profane use; a place which all may enter, &c. Ὅσιον differs from ἱερὸν in the same manner as βέβηλον from ἀβέβηλον. See Ammonius in vv. ὅσιος and ἀβέβηλα. In Aristoph. Lysistr. v. 743, one of the women in the Acropolis, pretending to be seized with the pains of labour, exclaims

ὦ πότνι' Εἰλείθυι', ἔπισχες τοῦ τόκου,
ἕως ἂν εἰς ὅσιον μόλω 'γὼ χωρίον,

administration extend to all alike. Such, for example, are the public observances of religion, [298] the priesthood, the temples of the gods, and all other sacred things; the treasury, the public land, and public property in general; the magistracy, the courts, the laws and institutions of the state, and in fine the state itself. Pollux, therefore, when he tells us that the people determined in the fourth assembly *περὶ ἱερῶν καὶ ὁσίων*, [299] comprises under this expression every thing relating to the government of the state which he had not before particularly enumerated. Æschines speaks in a similar manner, when he states that the law enjoins *ἐπειδὰν τὸ καθάρσιον περιενεχθῇ καὶ ὁ κήρυξ τὰς πατρίους εὐχὰς εὔξηται, προχειροτονεῖν τοὺς προέδρους περὶ ἱερῶν τῶν πατρίων καὶ κηρύκων καὶ πρεσβέων καὶ ὁσίων*[3]. And as the subjects hitherto discussed have been *ὅσια*, we will now proceed to make some remarks upon those which are properly *ἱερά*.

First, then, we learn from Josephus, that the introduc-

where the Scholiast rightly explains the word *ὅσιον*, by *εἰς βέβηλον καὶ μὴ ἱερόν, ἀλλ' ὅσιον εἰς τοκετόν. ἐπειδὴ ἐν τῇ ἀκροπόλει ἦσαν.* From this sense of *ὅσιος*, comes the substantive *ἡ ὁσία, fas.* Hom. Od. xvi. 423. Aristoph. Plut. 682. Demosth. Mid. p. 548. Hence Demosthenes opposes *τὰ ὅσια*, to *ἱερὰ χρήματα*, adv. Timocrat. p. 726, and elsewhere; *ὅσια* signifying money which may be expended for public and profane purposes; *ἱερὰ*, the sacred revenues exclusively. It is true that money was occasionally supplied from the latter source for the uses of the state; but it was only *borrowed*, and was returned on the first opportunity. Demosthenes likewise speaks of *ἡ ὁσία διοίκησις* in opposition to *ἡ ἱερὰ*, p. 730; whence *ὅσια* was ultimately applied to things which were *not* sacred, but in ordinary use. *Ἱερὰ καὶ ὅσια*, therefore, mean, *sacra et profana.* Men too are said to be *ὅσιοι*, who are guilty of no crime, i. e. *pious, religious, εὐσεβεῖς, θεοσεβεῖς:* and, *ὅσιον, τὸ δίκαιον, τὸ εὐσεβές, καθαρόν, ἁγνόν.* Hence every thing connected with piety and religion is called *ὅσιον*; for instance, funeral solemnities are sometimes termed *ὅσια.* *Ἡ ὁσία* signifies both a sacred rite, and also sanctity itself. See Homer's Hymn to Mercury, v. 130. and Matthiæ in loc. Demosth. Mid. p. 556. and Ulpian, p. 355. Ben. The remaining senses of *ὅσιος* are easily deducible from the above. For general information upon the word *ὅσιος*, consult Harpocration and Suidas in v. with the commentators. Valckenar ad Ammon. 184. Albert. ad Hesych. in v. Ruhken in Timæum, p. 196.

[3] In Timarch. p. 48.

tion and prohibition of all new or foreign formularies of religion was discussed and determined in the assembly. *Τοῖς δὲ ῥήτορσιν* (says that writer) *ἐφῆκαν πολιτογραφεῖν διὰ ψηφισμάτων ξένων θεῶν τὸν ἐπιτήδειον*[4]. We may instance the story told by Ælian[5], that Demades proposed to the people a motion for the apotheosis of Alexander; or the statement of Plutarch[6], that divine honours were actually decreed to Demetrius Poliorcetes. The Athenians, indeed, made so little difficulty in admitting strange gods into their national calendar, that their facility in this respect was a frequent source of joke with the comic poets; and Aristophanes declared that they had made their city Ægypt instead of Athens, from the multitude of Ægyptian deities whose worship they had introduced among them[7]. Other foreign gods are mentioned by Hesychius; Genetyllis, Corythalia, Pherea[8]; to which may be added the Thracian Bendis, said to be the same with Diana, [300] Sabazius, identified with Bacchus, Hyes and Attes, from Phrygia, of whom Demosthenes speaks with considerable contempt in his Oration *de Coronâ*[9], and a good many more such mongrel deities. Aristophanes[1] introduces on the stage (with immense applause, we may be sure) a certain god Triballus, *πάντων βαρβαρώτατος*, to ridicule the Athenians for allowing the most barbarous and out of the way divinities to have a place among the polite gods of their country.

Such new or foreign deities, then, could only be introduced by the command of the people; and those are, I think, in error who assert that the power of sanctioning their admission was vested in the Areopagus. There is

[4] Contr. Apion. ii. c. 35. ap. Wessel. ad Petit. p. 70.

[5] Var. Hist. v. cap. 12.

[6] Vit. Demetr. cap. 10—13.

[7] *Αἴγυπτον αὐτῶν τὴν πόλιν πεποιήκασιν ἀντ' Ἀθηνῶν.* Aristoph. frag. ap. Athen. ix. cap. 3. where see Casaubon.

[8] See Hemsterhuis ad Hesych. in v. *θεοὶ ξενικοί.*

[9] P. 313. and the commentators. Strabo, x. p. 722. and Casaubon. Cicero de Legg. ii. cap. 15.

[1] Aves, v. 1565. seq.

no doubt, indeed, that this court took cognizance of such as were charged with worshipping clandestinely unauthorized gods, or introducing on their own account new forms of religion—to prove which we need not go beyond the history of St. Paul[2]. But we must distinguish from this offence the crime of impiety, *ἀσέβεια*, which consists, not in the hasty assumption of new religions, but in the contempt, violation, and neglect of the established one. Both may indeed [301] be sometimes combined, as in the charge brought against Socrates, viz. that he was guilty *τοῦ ἀδικεῖν, οὓς μὲν ἡ πόλις νομίζει θεοὺς, οὐ νομίζων,* (which constituted *ἀσέβεια,*) *ἕτερα δὲ καινὰ δαιμόνια εἰσφέρων*: though it is by no means necessary that the two crimes should invariably be connected. Anaxagoras was impeached of impiety, not for introducing new gods, but for having the unheard-of audacity to assert that the sun was a red-hot ball: Protagoras, for having hinted in his writings that he could not quite make up his mind whether there really were such things as gods or not: Diagoras and Theodorus, for boldly and flatly denying their existence altogether: and the poet Æschylus, for having profaned the mysteries. The various proceedings which could be instituted against this crime are enumerated by Demosthenes: *τῆς ἀσεβείας ἐστὶν ἀπάγειν, γράφεσθαι, δικάζεσθαι πρὸς τοὺς Εὐμολπίδας, φράζειν πρὸς τὸν βασιλέα*[3], and that the Areopagus, if not always, frequently

[2] Harpocration in *ἐπιθέτους ἑορτάς.* Ἐλέγετο δὲ παρ' αὐτοῖς καὶ ἐπίθετά τινα (subaud. ἱερὰ), ὁπόσα μὴ πάτρια ὄντα ἡ ἐξ Ἀρείου Πάγου βουλὴ ἐδίκαζεν. From misunderstanding this passage Petit has fallen into the error which I have mentioned, Legg. Att. p. 69. and from which his constant followers Potter (ii. p. 453.), Pfeifer (i. 12. p. 19.), and Bos (i. 2. p. 9.) are not exempt. The expression *δικάζειν ἱερὰ ἐπίθετα* can never be applied to him who decides upon the admission or rejection of new ceremonies, but to him who passes judgment upon them when hastily and inconsiderately introduced. *Δικάζειν,* however, is seldom construed with an accusative.

[3] Demosth. adv. Androt. p. 601. extr. What he says of the Eumolpidæ was probably instituted by the advice of Pericles. Lysias, at least, says *Περικλέα ποτέ φασιν παραινέσαι ὑμῖν περὶ τῶν ἀσεβούντων, μὴ μόνον χρῆσθαι τοῖς γεγραμμένοις νόμοις περὶ αὐτῶν, ἀλλὰ καὶ τοῖς ἀγράφοις, καθ' οὓς οἱ Εὐμολπίδαι ἐξηγοῦνται.*

at least took cognizance of such causes, is proved by the concurrent testimony of several of the ancients[4]. We read also of a decree being passed by the people, to the effect that the names of all atheists and professors of astronomy should be given up, the latter of whom, by teaching their scientific nonsense about the sky and the stars, imbued the minds of their hearers with strange and new-fangled notions[5].

[302] The festivals of the gods were also under the direction of the people, and were a subject of discussion at their assemblies. There were at Athens two kinds of festivals: one comprising those which had been long received and handed down by tradition, called *πάτριοι ἑορταὶ*, and the other those which were of later introduction, and which they termed *ἐπίθετοι*[6]. Even these, apparently, could not be adopted without the sanction of the people. Plutarch, at least, speaks of the institution of the rites in honour of Diana the Huntress, *Ἀγροτέρα*, after the battle of Marathon, in a manner which makes it appear that such was the case[7]. And again, in speaking of the scenic representations exhibited in honour of Neptune in the Piræus, he tells us that Lycurgus brought in a law respecting them, *νόμον εἰσήνεγκε*[8]. We have already seen that all new laws properly required the approbation of the people before they were submitted to the Nomothetæ, and that they were sometimes even enacted in assembly. The number of these *ἐπίθετοι ἑορταὶ* was very great, and the preparations made for them more ex-

[4] See Meursius, Areopag. chap. ix. (Gronov. Thesaur. v. p. 2107.) Petit, Legg. Att. p. 70. and Wesseling.

[5] Plutarch. vit. Pericl. cap. 32. *Καὶ ψήφισμα Διοπείθης ἔγραψεν, εἰσαγγέλλεσθαι τοὺς τὰ θεῖα μὴ νομίζοντας, ἢ λόγους περὶ τῶν μεταρσίων διδάσκοντας.* The word *εἰσαγγέλλεσθαι* must not be understood here in its proper signification, which we have explained in chap. iii., but generally, for *μηνύειν*, in which sense we have shown in the same chapter that it is sometimes used.

[6] Vid. Harpocrat. in *ἐπιθετ. ἑορτ.*

[7] De Herodoti malignitate, p. 862. B. Compare Xenoph. Exped. Cyr. iii. 2. 12. Ælian, Var. Hist. ii. 25. and Perizon. in loc. Meursius, Athen. Att. ii. 5.

[8] Vitt. x. Orat. p. 841. E.

tensive than those for the πάτριοι ἑορταί. They were almost always attended with public feasting, and distributions of the Theorica[9]. Supplications and thanksgivings, (εὐχαὶ, εὐαγγελία, ἐπινίκια, χαριστήρια[1]) were likewise decreed by the people, and sometimes [303] recurred annually, as in the case of the ἐπινίκια instituted in honour of the naval victory of Chabrias off the island of Naxos, which were periodically celebrated on the sixteenth day of Boedromion. And on the twelfth of the same month a certain festivity, χαριστήρια τῆς ἐλευθερίας, in memory of the liberation of the state from the Thirty tyrants, was annually held[2]. Such festivals then must be considered as ἐπίθετοι ἑορταί. Lastly, the celebration of the customary games and contests were assigned by public authority to particular feasts; as the contest of music to the Panathenæa, the exhibitions of the stage to the Chytri; the former of which is said to have been founded or restored by Pericles, the latter by Lycurgus[3]. Nay, we are told by one of the Grammarians[4] that not even that especial honour paid to the memory of Æschylus, by permitting his plays alone to be exhibited after his death, was decreed without a psephisma of the people to that effect. These examples will, I trust, be sufficient to shew the extent of the people's power in determining all matters of this description as well as those already enumerated. An assembly could be convened for the discussion of any business relative to a festival, even ἐν τῇ ἱερομηνίᾳ, when it was forbidden to transact any business of an ordinary nature[5]: and it would seem to have been

[9] See Isocrat. Areopagit. p. 344. Cf. Boeckh, i. p. 226. 237. seq.

[1] Æschin. de Fals. leg. p. 323. Cf. adv. Timarch. p. 178. Plutarch. Phocion. cap. 16. et 23. Demosth. cap. 22. Compare also Demosth. de Coron. p. 300—1. where mention is made of ψηφίσματα θυσιῶν. Vid. Meurs. Græc. Feriat. p. 111. and 118.

[2] Plutarch. de glor. Ath. p. 349. E. where many similar solemnities are recorded. On the victory of Chabrias see the Life of Phocion, cap. 6. fin.

[3] Plut. Periel. cap. 13. Vitt. x. Oratt. p. 841. E. Petit, Legg. Att. p. 145.

[4] Schol. ad Aristoph. Acharn. v. 11. Cf. Petit, Leg. Att. p. 140.

[5] Petit, Legg. Att. p. 86.

customary to hold an assembly after the celebration of some of the larger festivals[6], for the two-fold purpose of allowing the Archons, [304] who had the superintendance of them, an opportunity of laying before the people an account of their administration, and of making those peculiar appeals concerning any injury committed during the festival, which we have before explained under the title of *προβολαί*.

It is evident that the people had also the right of assigning to the various priests their respective duties and prerogatives; in proof of which we need only adduce the psephisma of Alcibiades, inscribed on a column in the temple of Hercules at Cynosarge, and preserved in part by Athenæus[7]. In this decree the priests and the Parasiti are enjoined the performance of certain monthly ceremonies: and the latter are required to nominate an assistant, who is to be either a bastard or the son of a bastard, and who, if he refuses to undertake the office, is liable to be prosecuted by them. And although the remark which I have before made is true, viz. that this psephisma should more properly have been designated as a law (*νόμος*)[8], yet this does not materially affect our

[6] This is expressly stated of the Dionysia, in a law in Demosth. Mid. p. 517; and we may infer the same of the Mysteries, from the same oration, p. 571. We cannot be certain about the rest, though it is probable that the custom extended to them also. See our remarks on *προβολή*, in chap. v. of this book.

[7] Athen. vi. 26. Compare Petit, p. 163.

[8] Chap. iii. init. Athenæus has preserved (vi. 26—7.) some other regulations respecting the Parasiti, which appear to have been taken *ἐκ τῶν τοῦ Βασιλέως νόμων*, mentioned by Julius Pollux, iii. 39. and vi. 35. These laws related to the sacred rites and ceremonies, of which the king Archon had the superintendence. But some have erroneously identified with these the *βασιλικοὶ νόμοι*, mentioned in Xenoph. Œcon. xiv. 6. The laws there spoken of do not appear to me to be any particular extracts from the Attic code; but, generally, laws which kings adopt, the king of Persia especially, whom the author had before mentioned in chap. iv. Ischomachus (whom Xenophon supposes the speaker) jocosely says, (after observing that he made use of Draco's and Solon's laws in the management of his household,) that he does not now adopt these alone, but *royal laws*, i. e. he imitates the manner of kings, in not only deterring them by punishments from vice, but

present argument, [305] because we know what licence the people assumed to themselves in enacting laws. Every measure, however, relating to the introduction of a new religion, a national or adopted festival (*πάτριος ἢ ἐπίθετος ἑορτή*), or the annual celebration of a game, of all which the people, as we have seen, had the direction,—every such measure, we say, is with more propriety considered a *law* than a *psephisma*, or *decree*. This, indeed, will be at once perceived by all who have a distinct view of the difference between the two; yet it may be of service to some of my readers to remind them of it in this place.

Among the Procœmia of Demosthenes (though some, without reason, as I think, assign them to another author) we have one, in which the orator, at that time one of the Prytanes, announces to the people, that sacrifices had been offered by his colleagues in office to Jupiter Soter, Minerva, Victory, Persuasion, the Mother of the gods, Apollo, and other deities; and that the result of all the sacrifices had been favourable[9]. We know that Jupiter Soter was worshipped at Athens with peculiar solemnities, and that a festival was celebrated to him on the last day of every year, which was the twenty-ninth of Scirrhophorion; so that we might be inclined to imagine, that the announcement in the Procœmium referred especially to this[1]. I find, however, that some commentators[2] entertain the opinion, that, as certain sacred rites were performed daily by the Prytanes (of the truth of which [306] supposition I have the greatest doubts[3]),

in inciting them by rewards to virtue, which is the practice of kings. I doubt whether the passage can be understood with propriety of the *civil laws*. At all events, Valesius ad Maussac in Harpocr. p. 240, confounds these laws most erroneously with the sacred rites and unwritten (*ἄγραφα*) laws of the Eumolpidæ. Every one may at once perceive that the latter have no connection whatever with the present passage of Xenophon, and are moreover entirely different from the *νόμοι τοῦ Βασιλέως*.

[9] *Προοιμ. δημηγορ.* p. 1460.

[1] Hemsterhuis, ad Schol. Aristoph. Plut. v. 1176.

[2] Nast, ad Theophrast. Charact. p. 107.

[3] We know from Antiphon, de Saltat. p. 146. 35. Steph. that the senators, upon entering the senate-house, offered certain prayers to *Ζεὺς Βουλαῖος*, and

the result was in every case announced to the people, or rather, as the assemblies were not held every day, to the crowd collected in front of the senate-house. Casaubon[4], however, maintains that this was done only on the fourth assembly in each Prytany, because Julius Pollux states that all matters of religion were then discussed by the people. It is certainly improbable that this announcement should be made only once a year, on the last day, especially when Theophrastus describes it as characteristic of the man of trifling ambition, *μικροφιλοτίμου*, to request of the Prytanes to be allowed to announce the result of the sacred rites to the people, *ὅπως ἀπαγγείλῃ τῷ δήμῳ τὰ ἱερά*. Now if this were done only once a year, it is probable that Theophrastus would not have adopted it as an example to illustrate the character he was describing, or at least that he would have expressed himself differently. We know that the Prytanes did occasionally perform certain sacred rites for the prosperity and liberty of the people[5]; though how often this was done, whether once in each Prytany, or more or less frequently, I confess I am ignorant. I imagine, then, that it was the result of these sacred rites, i. e. their favourable or unfavourable performance, which was announced to the people by the Prytanes; and to these I apprehend the passages both in the Characters of Theophrastus and the Proœmium of Demosthenes refer.

[307] Among the sacred rites we may enumerate also those public funeral ceremonies, *οἱ ἐπιτάφιοι ἀγῶνες*, with which the Athenians honoured the remains and celebrated the memory of those patriots who had fallen

Πάλλας Βουλαία. But these prayers (*εὐχαὶ*) are not identical with sacred rites (*ἱερά*), nor can an announcement be easily made respecting the favourable success of the former. The statement of Ulpian, ad Dem. Mid. p. 351. 209, and some others, about the daily performance of the *εἰσιτήρια* by the senate, is false. The true account is given by Suidas in *εἰσιτήρια*. See Hesych. in v. *εἰσιτήρια*, and the commentators.

[4] Ad Theophrast. Char. cap. 21.

[5] Antiphon de Saltat. p. 146. 38. Compare Demosth. de Fals. Leg. p. 400.

in battle in defence of their country. This custom, however, is so well known that it is unnecessary to say more respecting it, except that the orator who pronounced the funeral oration was appointed for that purpose by the people, and that some of the parents of the dead provided the funeral supper (τὸ περίδειπνον[6]) at the public expense,—both which facts we learn from Demosthenes. Plato, however, in the Menexenus[7], tells us the orators were created by the senate; from which we may infer either that the custom was changed in later times, or that there was no definite law upon the subject, and that the election consequently devolved sometimes upon the senate and sometimes upon the people.

CHAPTER XI.

On the Magistracies, Administrations, and Services.

All the offices of the state may be comprised under three classes; first, the magistracies, ἀρχαὶ; secondly, administrations (or *curacies*), ἐπιμελείαι[1]; and, thirdly, services, ὑπηρεσίαι. Aristotle observes, that it is difficult to define who should properly have the title *magistrate* assigned to them. "A state of civil society" [308] (he proceeds to remark) "requires many superintendents and prefects; yet the whole of these cannot with propriety be called *magistrates*, whether they are elected by lot or by vote. For instance, the priests cannot claim this appellation, their office having no connection with civil power: and the same may be said of the choregi, the public criers, and the ambassadors, who are also nominated by the people. Of the administrations, some are civil, and relate either to the citizens collectively, in one particular respect, as soldiers are all subject to the au-

[6] Demosth. de Coron. p. 321.
[7] P. 234. B.
[1] See Æschines adv. Ctesiph. p. 398.

thority of the general; or to a part of them only, as the office of those called *γυναικονόμοι*, and *παιδονόμοι*. Some again are connected solely with the public economy, like that vested in the *σιτόμετροι*, who are from time to time appointed; and some must be considered as *services*, being duties which in more opulent states are performed by slaves. Those especially are to be considered *magistrates*, who are entrusted with the decision, jurisdiction, and chief authority in certain affairs, and particularly with the latter. *Τὸ γὰρ ἐπιτάττειν* (says Aristotle) *ἀρχικώτερόν ἐστιν*[2]. However, the determination of this question is of little importance for common usage." Thus speaks the philosopher, with great truth; and not the least so in his remark that the question is unimportant for common purposes. At Athens the term *ἀρχὴ* was not withheld from ambassadors, inquisitors (*ζητηταὶ*), public advocates, nor even scribes[3]; although none of these had the office of deliberating, judging, or commanding. If we are desirous of speaking accurately, we must consider all such as [309] can neither deliberate, judge, nor command, but yet in the discharge of some public office, are not subject to the control of others, but act according to their own discretion, as something between magistrates and servants; that is, *ἐπιμεληταί*, overseers, or managers. Of this kind were ambassadors at Athens, advocates (*συνήγοροι*), some of the scribes, inquisitors, all the treasurers (*ταμίαι*), the *σιτῶναι* and *βοῶναι*, and many other public officers of the like description, who can with great propriety, in my opinion, be designated as *ἐπιμεληταί*, although the word properly bears a more extended signification, comprising the duties of both commanders and servants, according to the usage of Aristotle. But at Athens this more refined distinction was never observed in common parley; and some of those who were designated as *ἐπιμεληταὶ*, for

[2] Aristot. Polit. iv. 15. Compare Sigonius, de Rep. Ath. iv. cap. 1.

[3] See Hudtwalcker, de Diætet. p. 32.

example, the ἐπιμεληταὶ τοῦ ἐμπορίου, were in reality more properly magistrates, ἀρχαί. Ἔχει δὲ ταῦτά τιν' ἄλλην διανοητικὴν πραγματείαν, as Aristotle observes. But it would be exceedingly difficult, and quite inapplicable to our present subject, to determine this question so as to define with accuracy what public offices at Athens are to be considered as ἀρχαὶ, what as ἐπιμελείαι, and what as ὑπηρεσίαι. It is rather our province to shew, as far as possible, what magistrates, overseers, and servants, and in what manner, were created by the people in assembly. I can scarcely, however, indulge in the hope that I shall be able to give a complete enumeration of all these, without a single omission: so many were there of whom the names alone are now known to us. Yet I shall endeavour to detail all those at least, who, as we learn from the testimony of the ancient writers, were created by the people in assembly. [310] And should some of the number chance to have escaped my notice, I shall rely upon the indulgence of the candid reader, who is well aware that it is impossible for one individual to peruse every thing, or to use such diligence in making notes and extracts as to omit nothing.

There were, then, three ways of creating magistrates at Athens—if I may be allowed, for the sake of brevity, to comprehend occasionally by the term *magistrate*, the ἐπιμεληταὶ also and ὑπηρέται. They were elected either by the suffrages of the whole people in assembly, or by lot, by the Thesmothetæ in the temple of Theseus, or, again, by vote in the convocations of the tribes and demi[4]. Upon this last method of election I shall speak more fully in the next Book. The custom of appointing magistrates by lot originated some years subsequently to the

[4] This is well known to every school-boy, from the various works on Grecian antiquities. I need hardly add, that those who were elected in assembly were said to be χειροτονητοί: those by lot, κληρωτοί: those by the tribes and demi, αἱρετοί. Compare Sigon. de Rep. Ath. iv. cap. 1. Petit, Leg. Att. p. 300—4.

time of Solon; for we are informed by Aristotle[5] that the legislator made no alteration in the ancient system of electing them by vote. Such a system was in fact most excellently adapted to that form of constitution which Solon deemed the best—a medium between democracy and aristocracy[6]. [311] But Solon did not permit all without distinction to hold the office of magistrate; the lowest class, the Thetes, were excluded from that privilege, and allowed no further share in the administration of the state than a vote in the assembly and the power of sitting as judges in the Heliæa. The first innovation which was introduced after the time of Solon, was the appointment of some magistrates, the Archons for example, by lot; although the same distinction of classes was still observed. We cannot reasonably suppose any other than Clisthenes to have been the author of this alteration[7], since it was a step so well calculated to diminish the power of the Patricians, who, when their election depended upon the votes of the citizens in assembly, had no difficulty in surpassing their rival plebeian candidates; but had no advantage over them when the matter was decided by the chances of the ballot. At last, after the second Persian war, Aristides[8] laid open to all classes of

[5] Politic. ii. cap. 12. where αἱρετοὶ are used in a general signification for χειροτονητοὶ, and αἵρεσις for χειροτονία. Add also Plutarch, compar. Solon. et Public. cap. 2. who informs us that Publicola imitated the institution of Solon in giving the people the power of creating magistrates. Isocrates too, Areopagit. p. 342. states that the magistrates were elected originally not by lot but by suffrage. Compare Demosthenes, in Neær. p. 1370. who is speaking of the king Archon, though he refers to the age of Plutarch institutions which were in fact of a much more modern date.

[6] That the creation of magistrates by lot, is democratical, by suffrage, aristocratical, is remarked more than once by Aristotle. Vid. Polit. iv. cap. 9. vi. cap. 2.

[7] In the first Persian war, a few years after the time of Clisthenes, we know from Herodotus that the Archons were elected by lot, vi. cap. 109, where the Polemarch is termed ὁ τῷ κυάμῳ λαχὼν Ἀθηναίων πολεμαρχέειν. That they were, however, always elected from the Pentacosiomedimni, we learn from the testimony of Demetrius Phalereus, in Plutarch, cap. i. Aristid.

[8] Plutarch, Aristid. cap. 22. where οἱ ἄρχοντες must not be limited to the

citizens almost every public office, whether conferred by suffrage or by lot. I am however inclined to suppose that some distinction of fortune was still observed after the time of Aristides; for the treasurers (*ταμίαι*) were elected by lot exclusively from the citizens of the highest class[9]; and in the preliminary test, or *ἀνάκρισις* of the nine Archons, the question was invariably put to them, [312] whether they had a competent estate, *εἰ τὸ τίμημα αὐτοῖς ἐστίν*[1]. Even in the time of Isæus, there must have been some magistracies which none were qualified to hold but those who had a knight's fortune: for we find in that orator one Pronapes blamed for having re-

nine Archons, but understood of the magistrates in general. Compare Boeckh, ii. p. 410. Perizon. ad Ælian. viii. 10. Corsini, Fast. Att. Diss. i.

[9] Pollux, viii. 97.

[1] It may, however, be maintained that this institution became obsolete after the time of Aristides; and I cannot deny that such may have been the case. Yet it often has been a subject of surprise to me, that a custom so long disused and forgotten in the state, should have been described so minutely and accurately by Pollux, or rather Aristotle, whom he has transcribed. In Lysias, indeed, (*περὶ τοῦ ἀδυν.*) p. 169. 24. we find a disabled pauper, earning a scanty livelihood by his trade, but so poor as to receive an allowance from the public money, asserting, that, were he not disqualified by his lameness, he might be elected Archon. This proves that at that time no account was taken of fortune in the election of the Archons. The date of the oration is subsequent to Euclides. vid. p. 170. 29. What, then, if we should suggest that the custom became obsolete immediately after the Archonship of Euclides, (Ol. 94. 2.) particularly since many other changes were then introduced into the commonwealth? We must not however on that account imply *τὸ τῶν πεντακοσίων τίμημα* in the *ἀνάκρισις* of the Archons, though that *ἀνάκρισις* continued in use after the time of Aristides. I am of opinion that the Thetes were permitted by Aristides to hold the high office of Archon—not, however, *all* of them promiscuously. For it must be remembered that some of them had property of their own, as the class comprehended all such as had landed property producing less than one hundred and fifty or two hundred medimni. There was therefore a certain definite amount (*τίμημα*) assigned, less than the *ζευγίσιον*, the possessors of which were qualified to hold that magistracy: while all who fell short of this amount were excluded from holding it, lest the dignity of the office should be polluted by the contagion of any pennyless fellow whose ambition led him to aspire to it. Many, I doubt not, will consider my suggestion somewhat rash; but I have nevertheless thought it worth proposing. See Boeckh. ii. p. 43. seq.

turned himself as possessed of but trifling property, but still claiming ἄρχειν τὰς ἀρχὰς ὡς ἱππάδα τελῶν[2]. What these magistracies were, is not clear; [313] but it is probable that they were in some way connected with the management of the public finances, because it is natural to suppose that all appointments of this description were conferred upon those only, whose fortune was a sufficient guarantee to the state of the security of its property. The laws moreover enjoined that none should be elected Strategi, who were not possessed of certain landed property within the territory of Attica[3]; nor is there any reason to suppose that this law was subsequently abrogated, though perhaps it was not always strictly observed.

Of those magistrates whom we know to have been invariably appointed not by lot but by the votes of the people, the first were the Strategi. Of these there were ten annually elected, at least subsequently to the time of Clisthenes, who increased the number of the tribes from four to ten, from each of which one Strategus was appointed[4]. Anciently the whole number used to go out to war, and take the command upon them in turn for a single day each. The Polemarch accompanied them, to assist them in their counsels, and to take the command of the right wing in battle[5]. But in later times, when the opulence and extent of the state had considerably increased, and the wars in which it engaged were both of a longer duration, and carried on at a greater distance from home, the Polemarch remained in the city for the purpose of dispensing justice to the resident aliens, and transacting other business of the state, while the Strategi were sent out on service, sometimes all together, sometimes one, two, or three of them at once. The command was vested in them in various ways. Occasionally one had

[2] Isæus, de Apollodor. hered. p. 67. 32. Concerning Pronapes, see ibid. p. 65. 17.

[3] Dinarch. in Demosth. p. 99.

[4] Plutarch, Cimon, cap. 8.

[5] Herod. vi. 109. 110. 111.

supreme authority over the rest; at other times all were endued with equal power; or some took the command by land and others by sea; or again, different individuals undertook the care of different departments[6].

[314] In the mean time those who had remained at home had certain business to perform, and particularly that relating to war, as for example the classification of the citizens into Symmoriæ, according to which the taxes called εἰσφοραὶ were paid; the arrangement and disposal of the Trierarchies, the decision upon exchanges of property (ἀντιδόσεις), and other matters of a similar nature; for which reason they had also the power of convening the people to the assemblies[7]. In the time of Demosthenes not more than two Strategi were usually sent out to war, viz. ὁ ἐπὶ τῶν ὅπλων or ὁπλιτῶν, and ὁ ἐπὶ τῶν ἱππέων στρατηγός[8]. A third, ὁ ἐπὶ τῆς διοικήσεως, took charge of the pecuniary matters at home, and provided pay for the soldiers[9], &c. The remainder of the Strategi Demosthenes upbraids with staying idly in the city, and attending to nothing but conducting processions with the Sacrificers, μετὰ τῶν ἱεροποιῶν[1].

[6] Thucyd. i. 45. 61. ii. 58. 70. 79. iii. 86. 91. 115., and in many other places, to all of which I need not refer. Compare Xenophon, Hellen. i. cap. 4. §. 20. where Alcibiades is said to have been created ἁπάντων ἡγεμὼν αὐτοκράτωρ. Aristocrates, therefore, and Adimantus, οἱ κατὰ γῆν στρατηγοὶ, were subject to him, §. 21. In the same manner we must understand the words of Thucydides, ii. 65. Στρατηγὸν εἵλοντο (τὸν Περικλέα) καὶ πάντα τὰ πράγματα ἐπέτρεψαν. Compare Plutarch, Aristid. c. 11. and 8. Xenophon speaks of ten Strategi being sent out, Hellen. i. 5. 16. Eight transact business in common, ib. 7. 31—2. At Ægos Potamos there were also several generals: ib. ii. 1. 16. seq. cf. Plutarch, Alcib. c. 36. Sometimes, on extraordinary occasions, the command was conferred even on private individuals. See Thucyd. iv. 2. and 28.

[7] Cf. Vales. ad Harpocrat. p. 175. Perizon. ad Ælian. v. 13. Taylor, Lect. Lysiac. p. 320. Wolf, Proleg. ad Leptin. p. xciv. cii. Boeckh, i. p. 195. They had also a certain place of meeting, called Στρατήγιον, where they assembled for deliberation. See Kühn ad Polluc. ix. 41.

[8] See the decrees of Callisthenes, Demonicus, and Callias, in Demosth. de Coron. p. 238. 265. Lysias, in Diogit. p. 894. R.

[9] Demosthenes, ut supra.

[1] Philipp. i. p. 47.

[315] Next in dignity to the Strategi were the Taxiarchs, who were elected by the people[2], one from each tribe. Their duty was to attend upon the Strategi, whenever a levy of soldiers was to be made; and to keep in their possession lists (*κατάλογοι*) of the young men of their respective tribes who had not yet seen military service. In war, they took the command of the *ὁπλῖται* of their own tribes, marshalled the men in their ranks, and led them to battle[3]: for it must be remembered that the distinction of tribes was not less observed in war than at home[4]. Demosthenes, however, complains that these officers also were all but exempt from active service, and little more than titled idlers. The fact is, the safety of the state at that time chiefly depended upon mercenary forces and foreign generals[5].

Two Hipparchs, and ten Phylarchs, also elected by the people, had the command of the cavalry. The former of these had the same duties to perform among the cavalry as the Taxiarchs had among the heavy-armed infantry[6].

The magistrates next to be enumerated are those who had the charge of the revenues. The first of these were the treasurers (*ταμίαι*), the number of whom at Athens was great, and the duties various. There were ten treasurers of Minerva (*ταμίαι τῆς θεοῦ*), and as many of the gods (*τ. τῶν θεῶν*), to whose care the sacred revenues were entrusted. These however were elected by lot from the Pentacosiomedimni alone. The order of their election in assembly [316] was as follows: first the public

[2] Demosth. Philipp. ut sup. Pollux, viii. 87. Barthelemy's mistakes (Voy. du jeune Anachars. tom. ii. p. 164. and 168. ed. Bipont.) it is not worth while to expose.

[3] Æschin. de Fals. Leg. p. 333. Demosth. in Bœot. de nom. p. 999. Pollux, viii. 94. and 115. and Jungermann. Lexic. Rhetor. Bekker. p. 306. Compare Lysias, in Alcibiad. p. 144. 37. in Agorat. p. 137. 18. pro Mantith. p. 147. 20.

[4] Cf. Taylor, Lect. Lysiac. p. 236. R.

[5] Demosth. ut sup.

[6] Pollux, ut sup. Cf. Sigon. iv. cap. 1. p. 632.

treasurer, *ταμίας* or *ἐπιμελητὴς τῆς κοινῆς προσόδου*, sometimes called *ταμίας τῆς διοικήσεως* or *τοῦ δήμου*, was appointed, and allowed to hold his office for a term of four years; secondly the treasurer of the Theorica, *ὁ ἐπὶ τῶν θεωρικῶν τεταγμένος*, who had charge of the money distributed to the people for admission to the sacred rites and the public spectacles; and lastly the treasurers of the sacred triremes, the Paralus and Salaminian. On the respective duties of these various treasurers the reader must consult Boeckh[7], whose profound investigations on this subject I shall not attempt to transcribe. I have, I believe, already observed that the people elected certain officers for the purpose of collecting the taxes imposed upon the citizens (*εἰσφόραι*)[8]. These officers were called *ἐκλογεῖς*, and were probably the same as those of whom we sometimes read by the name of *ἐπιγραφεῖς* or *διαγραφεῖς*. The extraordinary magistrates called *ζητηταὶ* were likewise elected by the people, to enquire into the case of debtors to the treasury, or malefactors[9]; as were also the *σύνδικοι*, whose duty it was to decide upon questions relative to confiscated property, and who were first instituted after the expulsion of the thirty tyrants, according to the testimony of Isæus quoted by Harpocration[1]. These are most frequently mentioned in the orations of Lysias; but a distinction must carefully be made between them and the *σύνδικοι* spoken of in Demosthenes and Æschines[2]. [317] At one time there were also certain extraordinary magistrates created by the people under the title of *συλλογεῖς*, *οἵτινες ἀπεγράφοντο τὰς οὐσίας τῶν*

[7] Publ. Econ. vol. i. p. 177. 196. 184.

[8] See chapter ix. of this book. There are, however, other *ἐκλογεῖς* and *ἐπιγραφεῖς*, on whom see Boeckh, p. 168. 359.

[9] Hudtwalcker, Diætet. p. 58. and the authors there cited.

[1] Harpocrat. in v. Σύνδικοι, and Valesius in loc. Compare Sigon. de Rep. Ath. iv. 3. p. 618.

[2] For these are nothing else than the *συνήγοροι*, or public advocates, while the former are judges. Petit, Leg. Att. p. 336-7, and Wesseling in loc. have confounded the two: Sigonius, ut sup. and c. 6. p. 633. and Heraldus, Animadv. in Salmas. iii. cap. 10. sect. 13 and 14. distinguished them.

ὀλιγαρχικῶν, in the words of the unknown compiler of the Lexicon Rhetoricum[3]. I imagine, however, that these were only created on one particular occasion, after the expulsion of the tyrants: for the συλλογεῖς τοῦ δήμου mentioned in an inscription of the date apparently of Ol. 112, were connected with the sacred rites, and in all probability derived their appellation from their office of convening the people to certain sacred assemblies[4]. The last magistrates appointed by the people were the Σιτῶναι, whose duty was to purchase and deposit in granaries the corn for the public use; and the Βοῶναι, who procured oxen for the sacrifices[5].

The superintendents of the public works were appointed either by the tribes or the people in assembly. Of the former of these we shall speak hereafter: by the latter, as we are informed by the Pseudo-Plutarch[6], Lycurgus was elected to superintend the preparations for war. Again, in a decree preserved by the same writer, that individual is said to have been χειροτονηθεὶς ἐπὶ τῆς τοῦ πολέμου παρασκευῆς, and during the period of his office to have deposited in the citadel not fewer than fifty thousand arms, to have equipped for sailing four hundred triremes, and to have finished certain buildings belonging to the docks[7], which had been before commenced, and the armoury. [318] He also built the Theatre of Bacchus, the Panathenaic Stadium, the Lycean Gymnasium, and

[3] Bekk. Anecdot. i. p. 304.

[4] See an inscription in Boeckh, Tab. ii. No. 8. and cf. ii. p. 253. There is not a vestige of testimony to prove that they held assemblies of the people, nor can we infer this merely from their appellation.

[5] On the Sitonæ, see Demosth. de Coron. p. 310. and Boeckh, i. p. 96. On the Boonæ, Harpocrat. in v. and Boeckh, i. p. 232.

[6] Vit. x. Orat. p. 841. c.

[7] Τοὺς νεωσοίκους, which are the separate buildings of the docks, τῶν νεωρίων. Vid. Hesych. and Etymol. Mag. in v. Lex. Rhet. Bekkeri, p. 282. Harpocrat. and Suid. in v. The overseers of the docks were called ἐπιμεληταὶ τῶν νεωρίων, and were undoubtedly ordinary magistrates. Lex. Rhet. ut sup. Compare Sigonius de Rep. Ath. p. 630. Lycurgus, who had been created extraordinary superintendent of the military preparations, discharged at the same time the office of ἐπιμελητὴς τῶν νεωρίων.

many other public works, as the same decree testifies[8]. We may therefore infer that he was appointed by the people the overseer of these edifices also. And we cannot doubt that Pericles, whom we find superintending the erection of the Parthenon, the Odeum, the temple of the Olympian Jove, and many other buildings, was commissioned to do so by the people[9].

Scribes were required in the republic of Attica for many purposes; and their number was consequently great. In fact there was not a single magistrate who had not his own *secretary*, either publicly appointed or privately engaged by himself[1]. These scribes, however, were held in little estimation, and were for the most part either public slaves, or, though free citizens, belonging to the lowest classes[2]. The scribes of the senate and people were considered more respectable, as were those called *Ἀντιγραφεῖς τῆς βουλῆς* or *τῆς διοικήσεως*, *checking-clerks* or *counter-scribes*[3]. [319] Of these, one was elected by lot every Prytany by the senators, and thence termed *γραμματεὺς κατὰ πρυτανείαν*, whose office, according to Pollux, was to take custody of the decrees and other public records drawn up in their respective Prytanies[4]. This is pro-

[8] Ut sup. p. 852. C. [9] Plutarch, Pericl. cap. 12, 13.

[1] See Boeckh, i. p. 198. Mention is also made of the secretaries of the Archons, the Logistæ, and the Eleven; Pollux, viii. 92. 102. Æschin. in Ctesiph. p. 403. No one can forget how frequently the scribes are called upon to read decrees, &c. in the judicial orations. These were, as it appears, the secretaries of the Archons. On the secretaries of the overseers of the market, see Wesseling ad Petit. p. 511.

[2] Hence Demosthenes contemptuously upbraids Æschines, because he *ὑπεγραμμάτευε καὶ ὑπηρέτησε τοῖς ἀρχιδίοις*, de Coron. p. 314. Cf. de Fals. leg. p. 419. 403. Petit, leg. Att. p. 342.

[3] The word is extant in an inscription in Gruter, p. 579. No. 10.

[4] Pollux, viii. 98. Mention is also made of this scribe in the law of Timocrates, p. 720. from which it appears that it was his duty to deliver to the Thesmothetæ *τὰς τῆς βουλῆς καταγνώσεις* (see chap. 3. of this book) a duty for which no one could be better qualified than the keeper of both them and the other public documents. Demosthenes, however, de Fals. leg. p. 381. asserts that the latter were under the custody of a public servant, *ἐν τοῖς κοινοῖς τοῖς ὑμετέροις γράμμασιν ἐν τῷ μητρῴῳ ταῦτ' ἐστὶν, ἐφ' οἷς ὁ δημόσιος τέτακται*. It appears to me probable, that these records were not deposited

bably the scribe who assisted the orators in engrossing decrees[5], and whose name, before the archonship of Euclides, was attached to the beginning of every decree[6]. The scribe entitled *γραμματεὺς τῆς βουλῆς*, was elected by the senators, not by lot, but by a show of hands, and is said to have had the custody of the laws[7]. Whether he had any additional duties to perform we do not know. [320] There was a third scribe, called by Thucydides *γραμματεὺς τῆς πόλεως*[8], by others *γραμματεὺς τοῦ δήμου*[9], or, *τῆς βουλῆς καὶ τοῦ δήμου*[1], or *ὑπογραμματεύς*[2]. He was nominated by the people, and was chiefly employed in reciting any documents required to be read in the senate or assembly[3].

Of the *checking-clerks* mentioned above, one was called *ἀντιγραφεὺς τῆς βουλῆς*, who attended upon the senators,

in the Metroum until some time after they had been drawn up, or at all events until the end of the Prytany. Should any one object to such a supposition, he will perhaps acquiesce in the not improbable opinion, that the scribe of the Prytany was keeper of the Metroum, but had under him a public servant, whose office was perpetual, and who seems indeed to have been a necessary assistant to one who had the charge of such a multitude of documents, not even an indifferent knowledge of which could have been attained in a short time. On the Metroum, see book i. chap. 12. init.

[5] See book i. chap. 11.

[6] See book i. chap. 12. Compare Corsini, Fast. Att. Diss. xi. Biag. de Decret. Ath. c. xiii. and xxxi. Boeckh, ii. p. 164.

[7] Pollux, ut sup. Boeckh supposes this to have been the scribe who is called in Inscriptions, *γραμματεὺς τῶν βουλευτῶν*, i. p. 201. He is mentioned in Demosthenes, p. 713. (a passage which confirms the statement of Pollux, that his office was to take charge of the laws), and also de Coron. p. 238. Harpocration, in v. *γραμματεὺς*, has confounded him with both the scribe of the Prytany, and with the counter-scribe.

[8] Thucyd. vii. 10.

[9] Decree in Plutarch's Lives of the Orators.

[1] Corsini, Fast. Att. Diss. xi. no. 11. Boeckh, i. p. 201.

[2] Demosth. de Fals. Leg. p. 363. The name *ὑπογραμματεὺς* is found in some Inscriptions, but is apparently different from this one, (see Corsin and Boeckh, ut sup.); as, however, I have not seen the Inscriptions, I cannot pass judgment upon the matter.

[3] Pollux, viii. 98. Compare Demosth. de Fals. Leg. p. 419. This scribe is mentioned by Suidas in v. *γραμματεὺς*, and by the author of the Lexicon Rhetoricum, Bekker, p. 226, by whom he is simply called *γραμματεὺς*, as he also is by Demosthenes, ut sup.

and copied the accounts of monies received by that body, and perhaps also other documents and records belonging to it[4]. This was the scribe whom we before stated to have been employed in drawing up and laying before the people accounts of the revenues every Prytany[5]. In the time of Æschines this officer was *χειροτονητός*: but afterwards, according to Pollux, elected by lot[6]. The other, *ἀντιγραφεὺς τῆς διοικήσεως*, or clerk of the administration, was appointed to be a check upon the treasurer of the public finances, [321] (*τῷ ταμίᾳ τῆς διοικήσεως,*) and to keep a duplicate account of monies received and expended[7]. We are not informed by any one of the writers of antiquity in what manner this officer was elected; but it is reasonable to infer, that, like the preceding one, he was chosen by the people.

There were likewise certain managers of the festivals, created by the people, as the *ἐπιμεληταὶ τῶν μυστηρίων*, who had the joint direction of the Eleusinia, with the king Archon[8]. To these we may add the prefects of the gymnasia, *σωφρονισταὶ*, of whom ten were annually elected from each tribe[9]. The Hyposophronistæ, Cosmetæ, and Anticosmetæ, are mentioned in conjunction with them in some inscriptions; but I do not remember to have read in what manner they were elected.

The public advocates (*σύνδικοι, συνήγοροι*) were, as I have already observed, created by the people. They acted either in the capacity of public accusers in those causes which were referred by the people to the decision of the Heliasts, or as supporters of the ancient laws in the court of the Nomothetæ. There were, however, other *σύνδικοι* appointed by the people, to plead the

[4] Harpocrat. in v. *ἀντιγραφεύς*. Pollux, viii. 98.

[5] Chap. ix. of this book. Compare Boeckh, i. 202.

[6] Æschin. adv. Ctesiph. p. 417. Pollux, ut sup.

[7] Harpocrat. ut sup. and Suid. See also Boeckh, ut sup.

[8] Lex. Rhet. Bekker, p. 279. Pollux, viii. 90. Harpocrat. in v. and Valesius.

[9] Lex. Rhet. p. 301. Etymol. Mag. in v. Corsin. Fast. Att. Diss. xi. 8.

cause of the state when impugned by other states, and before strange judges. Thus, when a quarrel arose between the Athenians and Delians concerning the temple of Apollo at Delos, and the decision of the matter was committed to the Amphictyonic council, Æschines was elected by the people to defend his country's claims before that court[1]. These *σύνδικοι* are not to be confounded with the Pylagoræ, or ordinary Amphictyonic delegates, [322] who, like all ambassadors, as I have before observed, were created by the people. Lastly, the people occasionally elected certain ambassadors, called *ἐξεταστὰι τῶν ξένων*, for the purpose of ascertaining the true number of the mercenary forces, lest their commanders should impose upon the state by demanding a larger sum for their pay than the real amount of their troops authorized them to do[2]. These also were *χειροτονητοί*[3].

It now remains for us to detail the manner in which all these different magistrates were elected by the people. In the first place, then, it is well known that the assemblies held for the purpose of creating magistrates were called *ἀρχαιρεσίαι*[4]. The Grammarians inform us that even in later times, when the people assembled for deliberation upon all other business in the theatre of Bacchus, these assemblies continued to be held in the Pnyx[5]. It is highly probable, that particular times were assigned by law for the election of the ordinary magistrates, although we are not informed by any competent authority

[1] Demosth. de Coron. p. 271. 272.

[2] See the authors quoted by Boeckh, i. p. 315.

[3] Æschin. in Timarch. p. 131.

[4] Xenoph. Memorab. iii. 4. 1. Vid. *συναγωγὴ λεξ. χρησ.* in Bekker's Anecdot. i. p. 449, where we learn (what indeed we know from other sources) that the Attic writers use the plural only of this noun. We find the singular in Herod. vi. 58. On the plural form *ἀρχαιρέσια*, see Mæris. The passage in Isæus, de Apollod. Hered. p. 66. 15. is corrupt.

[5] Pollux, viii. 134. Hesych. in v. *Πνύξ*, whose observation pertains to the times when one Strategus was chief magistrate at Athens, under the Roman empire. See Corsini, Fast. Att. Diss. i. no. 38.

that such was the case[6]. The assertion of one Grammarian[7], that the four [323] last days of every lunar year, that is, from the twenty-sixth to the twenty-ninth inclusive of Scirrhophorion, were called *ἀρχαιρεσίαι*, is little worthy of credence, as indeed any one might naturally infer from his additional statement, that during this same period of four days, the state was *ἄναρχος*, without magistrates, without Senate, without Prytanes. But the manifest falsity of this statement has long ago been exposed by others[8]; and it is much to be feared that these *ἀρχαιρεσίαι* of his, *ἀναρχία* and all, must fall to the ground. The fact is, the worthy Grammarian, supposing that the old magistrates laid down their office four days before the commencement of the new year, and being informed that others were not appointed to succeed them before the new year had actually commenced, could make nothing of these four nondescript days, except employ them in the election of new magistrates. Certainly, the choice of the time for a popular election was a happy one, when, if our Grammarian be correct, not even an assembly could be held; for he tells us that there were no magistrates, no Senators, no Prytanes! But, we then ask, who was there to convene the people, to preside in assembly, or to propose the new magistrates? The Archons or Prytanes? If so, they must have continued for that time in authority, and the state consequently have been by no means *ἄναρχος*. Observe, reader, how inconsistent is the Grammarian with him-

[6] Something similar may be inferred regarding the appointment of magistrates by lot, from an Inscription in Boeckh, Tab. ii. no. iii. *Ταμίας δὲ ἀποκυαμεύειν τούτων τῶν χρημάτων, ὅταπερ τὰς ἄλλας ἀρχάς.*

[7] See the author of the second argument to the oration of Demosthenes against Androtion, p. 590, where the commentators have already perceived that for *δύο ἡμέρας*, we should read *τέσσαρας ἡμέρας*. Vid. Taylor. in loc.

[8] Sigonius de Rep. Ath. ii. cap. 3. p. 560. Dodwell, de Cyclis, Diss. i. §. 9. and 10. Corsini, F. A. Diss. ii. no. 15. iii. no. 28. The statement of the Grammarian, I think, should be understood to apply to the *χειροτονητοὶ* alone, since the election of the *κληρωτοὶ* is not, if I remember rightly, ever called *ἀρχαιρεσίαι*.

self! But, you will urge, supposing the good man to have been a little hasty in asserting that there were no magistrates during a time when they in reality acted as usual; does it therefore immediately follow that he must also be wrong in telling us that the magistrates for the ensuing year had to be elected in these four days? And is it impossible that this piece of information may have been derived from some authentic source, though there be some slight grounds of suspicion that the former statement emanated solely from his own fertile invention? [324] Reader, believe me, the one is just as much to be depended upon as the other—they are both fabrications. For not to mention that there is no assertion, or vestige of an assertion, that such was the case, to be found in the whole of the ancient writers and remaining Grammarians, who can ever possibly bring himself to believe that such a multitude of magistrates could be proposed, seconded, elected, installed, in so few days? And what if these days be found even fewer than we have supposed them? It must be remembered that the last day of the year was the festival of Jupiter Soter, and we have the testimony of Lysias that the courts were then shut[9]. And can we suppose that assemblies could nevertheless be held on that day? On the preceding day, the last but one of the year, we happen to know, from the oration of Lysias against Evandrus[1], that the courts were open; and consequently that no assembly could be held on that day. So the four days are now abridged into two, viz. the twenty-sixth and twenty-seventh of Scirrhophorion. But again, on the latter of these two days we find that an extraordinary assembly was held in the Piræus to discuss some question relative to the dock-yards[2]: this day therefore could

[9] Orat. in Euandr. p. 175. 36. See supr. chap. x. of this book.

[1] Ibid. v. 36, which passage has been wrongly interpreted by Reiske, though correctly explained by Markland, except that the latter has imagined Evandrus was created one of the Thesmothetæ.

[2] Demosth. de Fals. Leg. p. 359. 360. This passage has been likewise adduced by Corsini, ii. 15.

not have been appointed by law for the creation of magistrates. But who is to believe that all the *ἀρχαὶ χειροτονητοὶ* were elected by the people in ONE day? However, the assembly in the Piræus was an extraordinary one: generally, *two* days were devoted to these *ἀρχαιρεσίαι*. But it is just as impossible that the magistrates should have been elected in two days as in one. Let us consider the obstacles to such an event. The magistrates elect had in the first place to undergo a separate scrutiny (*δοκιμασία*) before the Heliasts: [325] could this be held upon them all in a single day? And supposing they were rejected by the judges—what time remained for creating, examining, and approving, new magistrates in their stead? Evandrus was once created Archon Eponymus[3]; but dreading the result of the scrutiny to which he would have to be submitted, he persuaded the Thesmothetæ[4] to let his trial be post-

[3] Some have erroneously supposed that this man was created King Archon, misled, perhaps, by the words of Lysias, p. 176. 20. *Πῶς οἴεσθε τὸ ἄλλο πλῆθος τῶν πολιτῶν διακείσεσθαι, ὅταν αἴσθωνται—φόνου δίκας δικάζοντα, ὃν ἔδει αὐτὸν ὑπὸ τῆς ἐν Ἀρείῳ πάγῳ βουλῆς κρίνεσθαι.* But they should have remembered what the orator says a little before; *ἀξιοῖ—μετὰ τῆς ἐν Ἀρείῳ πάγῳ βουλῆς τὸν ἅπαντα χρόνον τῶν μεγίστων κύριος γενέσθαι*: because, that is, all the nine Archons were translated to the Areopagus at the expiration of their office. The meaning, then, of Lysias' words is this, that Evandrus, having been at the conclusion of his year admitted as an Areopagite, will take cognizance of murder. Now that he was neither King Archon nor a Thesmotheta, as Markland (I know not whence) supposes, but Eponymus, is proved by the following passage in Lysias, v. 21. *καὶ πρὸς τούτοις ἴδωσιν ἐστεφανωμένον, καὶ ἐπικλήρων καὶ ὀρφανῶν κύριον γεγενημένον.* (See Pollux, viii. 89.) Add also p. 175. 40. *ἔστι δ' ὑμῖν οὐ τοῦτο μόνον σκεπτέον, ἀλλὰ καὶ πότερον εὐσεβέστερον, τὸν βασιλέα καὶ τοὺς συνάρχοντας τὰ ὑπὲρ τοῦ μέλλοντος ἄρξειν ἱερὰ θῦσαι, κ. τ. λ.* In this passage, *ὁ μέλλων ἄρξειν*, can only mean, *ὁ τὴν ἐπώνυμον ἀρχὴν μέλλων λήξεσθαι, ἐπειδὰν ὁ Εὔανδρος ἀποδοκιμασθῇ.* In his place, then, he would have the King Archon, who was next in dignity to the Eponymus, to perform the sacred rites. Reiske, supposing that Evandrus was King Archon himself, has explained the whole passage wrongly.

[4] Lysias, p. 175. 39. *τὴν ἐξιοῦσαν ἀρχὴν πέπεικεν.* The Thesmothetæ are meant by these words, and not the Eponymus, as Markland imagined. It was the office of the former, *εἰσάγειν δοκιμασίαν ταῖς ἀρχαῖς.* (Pollux, viii. 88.)

poned till the last day but one of the year. When brought before the judges, he urged, as an argument to induce them not to reject him, that, if they did so, there would be no time [326] to substitute another, and that their national sacred rites would not in consequence be properly performed. Now if a magistrate could not in that time be elected by lot, we may surely infer that he could not be created by the votes of the people in assembly. And it is impossible that a proceeding, which never perhaps occurred more than once, and that irregularly, in the case of a magistrate elected by lot, viz. the postponement of his *δοκιμασία*, till the last day but one of the year—it is, I say, impossible that this should have been sanctioned and established by law in the case of magistrates elected by vote. But I fear I have been somewhat prolix in a matter which is, after all, self-evident.

We are compelled, then, to admit, that we do not know what times were legally appropriated to the election of magistrates in the assemblies of the people: nor is it a much less perplexing question, what magistrates presided over these assemblies. We are indeed informed by Pollux[5], that the election of the Strategi, the Taxiarchs, the Hipparchs, and the Phylarchs, was superintended by the nine Archons: must we thence infer that it was likewise their duty to create the rest of the ordinary magistrates at least? For my own part, as Pollux only designates the above magistrates, I am inclined to suppose that not the Archons, but the Prytanes and Proedri, by whom the assemblies were usually held, presided at the election of the remaining magistrates. Candidates for any office were, as is well known, called *σπουδαρχαί*[6]; whence Aristophanes[7] coins the word *σπουδαρχίδης, a place-hunter*. But the custom of canvassing for elections is more easily illustrated from the Roman, than the Grecian history: although the case of

[5] VIII. 87.

[6] Xenoph. Sympos. cap. 1. §. 4.

[7] Acharn. v. 595. Brunck.

Phocion is recorded as remarkable, who was frequently elected Strategus in his absence, without so much as ever applying for the appointment. *Ἐστρατήγησε* (says Plutarch)[8] *πλείστας* [327] *οὐ μόνον τῶν καθ' ἑαυτὸν, ἀλλὰ καὶ τῶν πρὸ αὐτοῦ στρατηγίας, οὐ παραγγέλλων, οὐδὲ μετιών.* The word *παραγγέλλειν*, however, the more ancient Attics did not use in this sense, but either *ἀρχαιρεσιάζειν*, which is quoted by the Grammarians[9] from Isæus and Dinarchus, or *σπουδαρχιᾶν*, which is extant in Suidas[1]. That Athenian candidates were not unacquainted with the best and most approved methods of courting the popular favour, may be inferred from the fact of the word *ἀρχαιρεσιάζειν*, which properly implies, *to canvass for an office;* also signifying, *to seek to ingratiate oneself with the people, τὸ πρὸς χάριν τοῖς πολλοῖς ζῆν*[2]. The most respectable of the above-mentioned methods were liberality to the citizens, in which Cimon is said to have surpassed all others, and munificence in the performance of liturgies, by which means Nicias became such a mighty popular favourite[3]. But we need not mention how many dishonourable ways of attaining influence could be employed by ambitious men in such a form of government as that established at Athens. Enticing professions and underhand bribery were as much in vogue at Athens as at Rome; and Isocrates[4] complains that in his time the chance of being elected Strategus [328] was always proportioned to the impudence of the candidates' bribes; and the more citi-

[8] Vit. Phocion. cap. 8.

[9] Harpocrat. and Suid. in v. Συναγωγ. λεξ. χρησ. p. 449. Pollux, viii. 82.

[1] In Xenophon, candidates are simply called *αἱρεθῆναι ἐπιμελούμενοι.* Memorab. iii. cap. 1. §. 3.

[2] Hesych. in *ἀρχαιρεσιάζειν.* See Bekker, Anecdot. i. 449. 28.

[3] Plutarch, Cimon, cap. 10. Nic. cap. 3. Compare Lysias de Aristoph. Bon. p. 157. 9. *εἰσὶ δέ τινες οἱ προαναλίσκοντες (εἰς λειτουργίας), οὐ μόνον τούτου ἕνεκεν, ἀλλ' ἵνα ἄρχειν ὑφ' ὑμῶν ἀξιωθέντες, διπλάσια κομίσωνται.*

[4] Social. p. 400. *οὕτως ὀλίγον αὐτῶν (τῶν νόμων) φροντίζομεν, ὥστε θανάτου τῆς ζημίας ἐπικειμένης, ἤν τις ἀλῷ δεκάζων, τοὺς τοῦτο φανερώτατα ποιοῦντας στρατηγοὺς χειροτονοῦμεν, καὶ τὸν πλείστους τῶν πολιτῶν διαφθεῖραι δυνηθέντα, τοῦτον ἐπὶ τὰ μέγιστα τῶν πραγμάτων καθίσταμεν.*

zens a man corrupted, the higher offices he attained. Yet the crime of bribery (*δεκασμὸς*) was punished with death by the Athenian laws [5].

The names of those who offered themselves as candidates for any magistracy were presented by the Archons or Prytanes, whom we have stated to have presided at the elections, to the people, with the question, Which of them they would have for their magistrate? This was called *προβάλλεσθαι, to propose them*, and the proceeding *προβολή* [6]. The people signified their pleasure by a show of hands, which was the legitimate method of expressing their will in the assemblies held for the purposes of election. They never made use, in these cases, of pebbles, or tablets, *πινάκια*, which were employed in electing magistrates by lot [7]. [329] But this latter proceeding had nothing to do with the assemblies; for the idea of Petit, that the people first selected by suffrage a certain number of candidates by whom lots were afterwards to be drawn, has already been refuted by others [8].

[5] Petit has omitted this law. *Συνδεκάζειν τὴν ἐκκλησίαν*, is found in Æschines, in Timarch. p. 109. On the bribery of the senate and courts, see Petit, p. 427; and on the distinction between *δώρων γραφὴ*, and *γραφὴ δεκασμοῦ*, Pollux, viii. 42.

[6] Demosth. de Coron. 277. Æschin. de Fals. Leg. p. 202, who asserts that he was proposed as an ambassador by Nausicles, and Demosthenes by Philocrates; both of whom were themselves ambassadors, but neither of them a Prytanis, as I imagine. Indeed, in all such appointments as could be sought, but not canvassed for, by candidates, it was natural that any individual should be proposed to the people, not merely by the Prytanes, but by any private citizen. In fact, this must have been the case, if any ordinary appointment was conferred upon a person without his having made application for it, as we know frequently happened to Phocion. The word *προβολὴ*, in the above sense, is frequently used by Plato, in the sixth book of the Laws, as, for instance, in p. 765. B. We must, however, be careful not to confound this signification of the word with that mentioned in the fifth chapter.

[7] Demosth. in Bœot. de Nom. p. 998. Compare Petit, Legg. Att. p. 303.

[8] Petit, p. 302. Perizon. ad Ælian. viii. 10. Both, however, have understood the words *ἄρχειν ἐφιέμενοι*, in Harpocration, sub v. *ἐπιλαχὼν*, to imply those who are *permitted* to hold magistracies; whereas they really mean, those who are *desirous* to do so. Every one knows that this is a common signification of *ἐφίεσθαι*.

Those who had been created were always at liberty to decline the office conferred upon them, on plea of illness or other sufficient causes; which was called *ἐξόμνυσθαι τὴν ἀρχὴν* or *τὴν χειροτονίαν*[9]. All, before they commenced the actual duties of their office, had to undergo the scrutiny called *δοκιμασία*, in which any one was at liberty to object to them as unfit persons, on account of a disreputable character, notorious crime, disaffection to the state, &c. The scrutiny was held by the Thesmothetæ[1]. Those who were rejected (*οἱ ἀποδοκιμασθέντες*) not only lost their appointment, but were also punished with a particular kind of *ἀτιμία*, if any credit is to be given to the author of the first oration against Aristogiton, who informs us that they were disqualified from speaking in assembly[2].

[330] But even those who were approved in the preliminary scrutiny, and entered upon their office, were subject from time to time to an investigation into their conduct in the assembly. For, in the first assembly of every Prytany, it was the duty of the Archons to ask the people, Whether they considered that any one of the magistrates had been guilty of such misconduct in the discharge of his duties as justified his removal from the state? Upon this, any one who pleased, even though a private citizen, was at liberty to bring before the people any complaint or accusation of injuries or crimes committed by them, which, if deemed of a heinous character, were sufficient to compel them to abdicate, and even, if thought proper, rendered them liable to a prosecution in court. But I have already said enough upon this subject in the fifth chapter, where an explanation of it appeared

[9] Æschin. de Fals. leg. p. 271. Demosth. de Fals. leg. p. 379. Compare Harpocration in *ἐξωμοσία*, and Valesius in loc. Pollux, viii. 55.

[1] Petit, Leg. Att. p. 306. seq.

[2] Orat. in Aristogit. i. p. 779. *εἴ τις εἴποι—ἐξεῖναι λέγειν—τοῖς ἀποδεδοκιμασμένοις, ἄρχειν λαχοῦσιν*: where the last word must not be understood in its literal sense. *Οἱ λαχόντες* are all who have been made magistrates in any way, whether by the suffrages of the people or by lot—whether *χειροτονητοὶ* or *κληρωτοί*. No probable reason can be assigned why the prohibition was confined to the latter of these, and not extended to the former also.

requisite for the more clear understanding of the matters there discussed[3]. We cannot be surprised at the prevalence of this institution in a republic like that of Athens, in which, as all were promiscuously eligible to the highest offices, it seems an inevitable consequence that power must have been frequently conferred upon those who would make the worst possible use of it.

CHAPTER XII.

On certain other matters of which the people had likewise the direction in assembly.

[331] There yet remain unnoticed a few subjects of which the people had the discussion and decision in their assemblies, and of which I shall endeavour to give a concise detail in the present chapter. First, we are informed by Harpocration, or rather Aristotle, whom that Grammarian follows, that in the first assembly of every Prytany the people were consulted upon the best methods of securing and maintaining the possession of Attica[1]. This territory was strongly protected by series of fortresses, called *φυλακτήρια* or *περιπόλια*[2], and garrisoned by companies of the younger citizens, who occasionally sallied forth through the vicinity, for the purpose of preventing any attempts which might be made at rapine, violence, or treachery. Socrates is represented by Xeno-

[3] Instances of magistrates having been compelled to abdicate by command of the people (*ἀποχειροτονηθέντες*) will be found in Demosth. in Timoth. p. 1187. in Theocrin. p. 1330. Dinarch. in Philocl. p. 110. 11. Compare also Demosth. in Aristocrat. p. 669. where the expression *ἀποστράτηγον ποιεῖν* is used for *ἀποχειροτονεῖν*, and Plutarch, Pericl. cap. 35. though the mention *τῶν ψήφων* is incorrect. The very words *ἐπιχειροτονία*, *ἀποχειροτονεῖν*, sufficiently prove that the people voted for deposing the magistrates by a show of hands, and not by pebbles.

[1] Harpocrat. in v. *κυρία ἐκκλησία*.

[2] Harpocrat. in *περίπολοι*. Jul. Pollux, ix. 16. and Kühn and Jungermann in loc. See Duck. ad Thucyd. vi. 45.

phon[3] as requiring from one whose ambition led him to aspire to be a statesman, a knowledge of every thing pertaining to the protection of the country, such as, what positions of the various garrisons were best adapted to the security of the district; what number of men were requisite, and what superfluous; so as to be capable of advising the people either to withdraw or increase them as occasion might require. The guards employed in this service were chiefly young recruits, ἔφηβοι, or lately enrolled in the registers of the demi[4]. They were called περίπολοι, *rangers*, from their duty of *going round* the district. It was customary on alternate years, to convene an assembly in the theatre, [332] in which these recruits were brought before the people and publicly presented with a spear and shield[5]. They were thence conducted to the temple of Aglauros[6], where they were bound by a particular oath, the form of which has been preserved by Stobæus[7], to the following effect:—"*I swear that I will never disgrace these sacred arms, and never desert my post in battle. I will fight, alone and with others, for the altars of my country. I will leave my native land not diminished, but increased in glory, to my posterity. I will obey those who exercise their lawful authority over me with discretion. I will conform to the laws, both now established and in future to be established by the people. If any one shall transgress, or endeavour to overthrow them, I will not sanction nor allow it, but will fight in their defence alone and with all. I will duly perform all the rites and ceremonies as*

[3] Memorab. iii. 6. 10.

[4] Of the age at which young men were enrolled, I have already spoken, p. 69. seq. (i. 6.)

[5] Harpocrat. in περίπολοι, and Maussac ibid. Valesius ad Maussac, p. 318. seq.

[6] Pausanias mentions one shrine of this goddess as situated in the Agora, near the temple of Castor and Pollux, Att. xviii. 2. and Herodotus another, in the citadel, viii. 53.

[7] Stob. Serm. xli. N. 171. See Jul. Poll. viii. 105. seq. et ib. interpp. Petit, Leg. Att. p. 231. seqq. et ib. Wesseling. Taylor ad Lycurg. in Leocrat. p. 189. R.

established by my country. Be witnesses to this my vow, ye powers of heaven, Aglaurus, Enyalius, Mars, Jupiter, Thallo, Auxe, Hegemone!" After this they served as rangers for the space of one or two years, during which time they were exempted from all foreign service[8]; but of these we have said enough.

Those who wished to appeal as suppliants to the people, were permitted to do so on the second assembly of the Prytany, according to Pollux[9]. Bearing in their hands a bough of olive, encircled or studded with tufts of white wool, they seated themselves at the altars of either the Mother of the Gods or of Mercy, which were situated in the Agora, or at an altar [333] in Munychia, or in some other consecrated place[1], and there remained till permission was granted them to appear before the senate or assembly, and fearlessly explain the object of their petition. Thus, for example, we read in Æschines[2] that when, after Philip had taken the city of the Olynthians by storm, some Athenian citizens then resident in the place had been made captives along with the Macedonians, their relatives appeared as suppliants before the people, entreating them not to give those who had been made prisoners up to destruction. Occasionally too a similar appeal was made by Trierarchs, who were unable to sustain the burden which the duty imposed, and therefore requested some alleviation of it; or by debtors to the treasury, petitioning the people for a remission of their debts[3]. Æschines[4] relates also of a certain public

[8] Harpocrat. and Pollux ut sup. cum Interpp. Schol. Thucyd. iv. 67. et Wass. et Duck.

[9] VIII. 96.

[1] On the suppliant boughs, ἱκετηρίαι, see Spanheim ad Aristoph. Plut. 383. Duck. et Wessel. ad Petit. Leg. Att. p. 106. On the altar of the Mother of the Gods, Æschin. in Timarch. p. 84. On the altar of Mercy, Schol. ad Æschin. de Fals. Leg. p. 200. Compare Pausanias, Att. xvii. 1. On the altar at Munychia, Lys. in Agorat. p. 132. 5. Demosth. de Coron. p. 262.

[2] Or. de Fals. leg. p. 200.

[3] Demosth. de Coron. p. 262. in Timocrat. p. 716.

[4] In Timarch. p. 84.

slave called Pittalacus, that when he had been shamefully abused and ill-treated by Hegesander and Timarchus, he seated himself in the garb of a suppliant before the altar of the Mother of the Gods, for the purpose of making his complaint to the people, and obtaining their assistance in punishing two influential individuals, whom he considered it neither safe nor easy to prosecute by his own unassisted endeavours. To this instance we may add the cases of Menon and Agoratus, which we have already mentioned[5]. Both of these, having some information which they were desirous of laying before the people, [334] sat as suppliants before an altar, petitioning for impunity and protection.

We may consider that there were two kinds of suppliants: the first comprising those who had any favour or assistance to request of the people; and the second, those who applied for indemnity previously to giving information of any crime in which they are themselves involved as accomplices. Both of them must first obtain ἄδεια; that is, permission, in the former case, to consult the people in assembly upon a subject not proposed for their consideration by the Prytanes; and, in the second, impunity from the consequences of their crimes, which is the immediate object of their petition[6]. And this is the meaning of the words of Julius Pollux: ἡ δευτέρα ἐκκλησία ἀνεῖται τοῖς βουλομένοις, ἱκετηρίαν θεμένοις, λέγειν ἀδεῶς (i. e. ἐπ' ἀδείᾳ) περί τε τῶν ἰδίων καὶ τῶν δημοσίων.

Lastly, the people likewise determined in assembly upon the propriety of conferring rewards and honours on such citizens or strangers, or even foreign states, as had in any manner signally benefitted the commonwealth. Upon this subject, however, it is unnecessary to enter into minute details, since it has been already sufficiently

[5] Plut. Pericl. cap. 37. Lys. in Agorat. p. 132. See chap. 4. of this book.

[6] On the various significations of this word, see Boeckh. Publ. Econ. ii. p. 184.

discussed by others, and lately by Koehler[7], whose treatise is so comprehensive and satisfactory, that I shall neither take unfair advantage of his researches, nor anticipate his future observations. I shall therefore merely take a summary view of the principal heads of the subject.—The most common rewards conferred on public benefactors in the time of Æschines and Demosthenes, were crowns of olive, or even of gold. This method of distinguishing such deserving individuals originated with the Athenians, and Pericles is said to have been the first who received a crown of olive[8]. At first, however, [335] this honour was but rarely bestowed; afterwards it became the common reward for even moderate deserts, and was conferred not only by the people in assembly and by the senate of five hundred, but very frequently by the separate tribes or demi. Those crowns, however, which were presented by the senate, or the people in assembly (though the latter could not confer them without the sanction of the senate[9]), were considered the highest distinction, for these only[1] were allowed to be publicly proclaimed by the crier either in the theatre, during the celebration of some festivity, or in the assembly. But if any citizen of Attica had been presented with a crown by some foreign state, the people sometimes permitted it to be publicly proclaimed in the theatre, at the request of a special embassy, provided the individual had proved himself worthy of such distinction[2].

The other rewards granted for similar reasons are constantly mentioned by the ancient writers, and are as follows. First, ἀτέλεια, *immunity*, was awarded either to private persons, states, or kings. When conferred on

[7] *Etwas zur Beantwortung der Frage: gab es bei den Alten Belohnungen des Verdienstes um den Staat, welche den Ritterorden neuer Zeit ähnlich waren?* In Morgenstern's *Dörptische Beyträge für Freunde der Philosophie, Litteratur und Kunst. Ann.* 1813. p. ii. 1814. p. i.

[8] Valer. Maxim. ii. 6. 5.

[9] On the form of such decrees see Hemsterhuis ad Lucian. Timon. cap. 50.

[1] See the authors quoted by Koehler. lib. iii. p. 22. seq.

[2] Æschin. in Ctesiph. p. 437. 639. 641.

private persons, citizens, or aliens, *ἀτέλεια* signifies an exemption from the burden of taxes and liturgies, with the exception of trierarchies [3]; although there were other kinds of immunities beside this [4]. States or kings rewarded with this privilege were free from paying harbour duties and taxes in their commerce with Athens [5]. A second honorary reward consisted in daily maintenance in the Prytaneum, *σίτησις ἐν Πρυτανείῳ*, the nature of which is well known [336] from the history of Socrates. Those who enjoyed this privilege for life were called *ἀείσιτοι* [6]; while some were on a particular occasion only honoured with an invitation to partake of a banquet in the Prytaneum, as for instance ambassadors on their return from an embassy [7]. *Προεδρία* was the distinction of the first seat in the theatre and other public assemblies [8]. *Εἰκὼν*, a statue or painting, placed in some public situation [9]; *ἐπιγράμματα*, inscriptions upon public monuments [1]; to which was sometimes added the title of *εὐεργέτης* [2]. These, and some other similar honours, were considered the highest which could be conferred. There were also certain ways of celebrating the memory of the illustrious dead, as by interring them at the public expense, by educating their children, portioning their daughters, providing maintenance for their posterity by allowing them the privilege of the *σίτησις ἐν Πρυτανείῳ*, presenting them with lands and other gifts; all which were conferred, according to the account of Plutarch, upon Aristides and

[3] Wolf. Proleg. ad Leptin. p. lxxi. See Boeckh. p. 93. ii. 5. 82.

[4] Boeckh. i. p. 93. Compare Theophrastus, Charact. xxiii. 3. Hemsterhuis ad Polluc. viii. 140.

[5] Wolf, ut supra.

[6] Pollux, ix. 40. Hesych. in v.

[7] Pollux, ut sup. See chap. 8. of this book.

[8] Casaub. ad Theophrast. Charact. cap. 5. 3. p. 70. ed Fischer. Hemsterhuis ad Polluc. viii. 133.

[9] Petit, Leg. Att. p. 377. Meurs. Ceram. gem. cap. 16. Dinarch. in Demosth. p. 95. 34. Nep. Miltiad. c. 6. Pausan. Att. c. 15. sect. 4. See Lys. fragm. 64. and Taylor, p. 18. R.

[1] Wolf ad Leptin. p. 288. 331.

[2] Wolf, ibid. p. 282. Compare Lysias, pro Polystrat. p. 159. 39. Steph.

his descendants[3]. Some rewards were peculiar to aliens, as the *ἰσοτελεία*, of which we have already spoken[4], the *προξενία*, or public hospitality of the state[5], the *ἐπιγαμία*, or right of intermarriage, which we read was occasionally granted to foreign states[6]. [337] Sometimes also the freedom of the city was granted to the inhabitants collectively of another state, by which all who crossed over into Attica became thereupon citizens of Athens[7]. This latter privilege, however, was but seldom conferred even upon single individuals, in more ancient times, or to requite the most signal services, since it was esteemed by far the most splendid distinction of all, and one which the greatest merit could scarcely expect to receive[8]. But afterwards, when the rigour of the ancient discipline was relaxed, and the majesty of the state infringed, the Athenians set a lower value upon admission to the rights of the state; and Isocrates complains that they conferred their nobility upon strangers with greater readiness than the Triballi or Lucani did their low birth[9]. The laws, however, forbade that those who were born slaves, *οἱ φύσει δοῦλοι*, should be admitted to the rights of citizens[1]; and in fact Solon intended that those only should obtain that privilege, who were banished their country for ever, or had taken up their permanent abode, with their families, at Athens, for the sake of practising some

[3] Plutarch, Aristid. cap. 27.

[4] See book i. chap. 6. p. 73.

[5] Spanheim ad Aristoph. Ran. 461. Valcken. Anim. ad Ammon. p. 201 seq. Wolf ad Leptin. 355.

[6] See Lysias, Fragm. *περὶ τοῦ μὴ καταλῦσαι τὴν πατρ. πολιτ.* p. 920. R. (from Dionys. Halic. vit. Lys. p. 93. Sylburg.) Isocrat. Plataic. p. 728. Spanheim Orb. Rom. Exercit. ii. cap. 22. p. 359. seq. (ed. Heinecc. Hal. et Lips. 1728.)

[7] Isocrat. Plat. p. 728. Demosth. in Neær. p. 1386. See Spanheim, Orb. Rom. Exercit. i. cap. 4. p. 18. seq.

[8] Orat. *περὶ συνταξ.* ascribed to Demosth. p. 173.

[9] Isocrat. Social. p. 400. *Σεμνυνόμεθα μὲν καὶ μέγα φρονοῦμεν ἐπὶ τῷ βέλτιον γεγονέναι τῶν ἄλλων· ῥᾷον δὲ μεταδιδόναι τοῖς βουλομένοις ταύτης τῆς εὐγενείας, ἢ Τριβαλλοὶ καὶ Λευκανοὶ τῆς αὑτῶν δυσγενείας.* Similar complaints are made in Demosth. p. 687.

[1] Dio Chrysost. Or. xv. p. 239. Petit, Leg. Att. p. 204.

particular trade or profession[2]. This law, however, was likewise violated in later times; [338] and the freedom of the state was presented as an honorary distinction to many a king and prince of distant lands, some of whom had never so much as seen, much less resided in, the city into which they were admitted[3]. On proposing and decreeing this privilege in assembly, we have laws to the following effect preserved by Demosthenes, if the oration against Neæra be rightly ascribed to him[4].

In the first place, it was unlawful to admit any one as a citizen but such as had proved himself worthy of the honour by his virtues and eminent services to the state. Hence it was usually specified in decrees, for what cause this privilege was conferred; and if that cause was deemed insufficient or inadmissible, the decree could be impugned by any citizen by a *γραφὴ παρανόμων*. Moreover, it was necessary that every proposal for conferring the freedom of the state, should be canvassed by the people in two assemblies; nor, even if the measure was allowed in the former of them, could it be ratified, unless six thousand citizens at the least voted in favour of it at the latter. The manner in which they voted was by ballotting with *ψῆφοι*, pebbles, previously to the removal of the hurdles (*γέρρα*) at the conclusion of the assembly, and to the admission of strangers who might wish to appeal to the people[5].

Those who had been thus presented with the freedom of the state were called *δημοποιητοί*, and enjoyed equal rights with the indigenous citizens, except that they were not registered in the *φρατρίαι* or *γένη*, wards or clans, though they were enrolled in the tribes and demi; and that they were not qualified to hold the office of either priest or Archon. [339] Their children, however, if born

[2] Plutarch, Solon, cap. 24.

[3] For example, to Perdiccas, king of the Macedonians, and Cotys, king of Thrace; to Meno the Pharsalian, Charidemus, Sitalces, Sadocus, Teres, Chersobleptes, Leuco, Dionysius of Syracuse, Euagoras of Cyprus, and others, enumerated by Spanheim, ut sup.

[4] Orat. in Neær. p. 1375.

[5] See book i. chap. 4. p. 58.

in lawful wedlock from a mother who was an Attic citizen, were in these respects also on a level with the rest of the citizens[6].

CONCLUSION.

I have now brought to a close my remarks upon the influence which the Athenian citizens possessed in their assemblies, and the various subjects which were there submitted to their deliberation and decision. I shall leave my intelligent readers to form their own estimate of the extent to which the licence of the populace prevailed, and the proportionate advantages and disadvantages which were thence likely to accrue to the commonwealth. Had the liberty of the Athenians been more confined, had their rights been less freely conferred, their great city could never have arrived at that height of splendour and glory to which, under existing circumstances, she did attain: never would she have been called the light and support of Greece, Hellas in Hellas, λιπαραὶ (as Pindar sings) καὶ ἀοίδιμοι Ἑλλάδος ἔρεισμ' Ἀθᾶναι. We should not now have had to admire so many immortal exploits—to dwell with delighted amazement upon the trophy at Marathon, and the annihilation of the vast fleet of the Persians by a handful of Greeks—nor to celebrate Platæa and the two-fold victory at the Eurymedon. We should have been deprived of those exquisite works of art, even the mutilated fragments of which we can never sufficiently admire. Where, but at Athens, could the divine genius of Demosthenes have been nurtured? Where the favourite of the Graces, Aristophanes, have displayed his native wit? Had Athens not been free, Socrates would either never have existed, or, if he had, been a different man. On the other hand, without that immoderate and uncontrolled liberty of the people, wars would have been neither so frequent, nor engaged in upon such slight grounds.

[6] Orat. in Neær. p. 1377.

The might of Greece would not have received so fatal a shock through insatiable thirst for empire: nor would the self-sufficient conceit of Cleon and Cleophon have been fostered by the ill-bestowed favour of their deluded followers. The valiant Miltiades, the just Aristides, [340] the prudent Themistocles, the wise Socrates, would not have suffered from the ingratitude of a jealous and malignant populace. The Athenian spirit would not have been changed by excessive licence from heroism to cowardice, from activity to slothfulness, from thriftiness and content to luxury and avarice: nor would they have bartered the glory and majesty of their ancestors for slavery and disgrace. But upon these and similar reflections I shall forbear to dwell at greater length. They will naturally suggest themselves to the minds of the inquiring reader, and have besides been repeatedly expressed by other writers. I shall now therefore proceed to the consideration of those subjects which I have reserved for the third Book.

THE ASSEMBLIES OF THE ATHENIANS.

BOOK III.—CHAP. I.

On the Division of Attica into Tribes and Demi.

BEFORE we enter upon the subject which we have proposed to discuss in the present book—namely, the assemblies of the tribes and demi[1], it will perhaps be advisable to make some preliminary observations upon the division of the people of Attica into these two well-known compartments. And although the institutions which prevailed previously to the time of Clisthenes have but little connexion with the matter before us, [342] yet, as they have been lately made the subject of the most profound investigations and elaborate treatises by some of the first scholars of the day, the reader will perhaps permit me to call his attention to a few mistakes which they appear to me to have committed, and which I shall endeavour to refute, while at the same time I propose my own views, supported, as far as my limited space will allow, by their respective arguments.

First, then, it is agreed, I believe, by all, that the Athenians were divided in the earliest times into four tribes, which were subsequently increased to ten by Clisthenes. We cannot however doubt but that the accounts now ex-

[1] [The translator has here ventured to omit a note of some length but no great importance, upon the question whether the Latin *populus*, *curia*, *pagus*, or *oppidum*, is the nearest equivalent to the Greek δῆμος.]

tant of the institutions of Cecrops, Cranaus, and Erichthonius on this point, are to be considered, like all the traditions of the ancients relative to that remote period, not as founded on the firm basis of historical truth, but framed by later writers, who ingeniously but uselessly endeavoured to derive authentic accounts of the origin of nations from the mythic compositions of their earliest poets. From this view I do not anticipate that many will be inclined to dissent, or demand a complete statement of the arguments which induce me to maintain that those who have regarded these fables as disguised and interpolated histories, have been much mistaken, and laboured to very little purpose in endeavouring to separate truth from fiction.

It is certain that Attica is, by its very situation and the nature of its soil, divided into three or four districts. On entering that territory from Megara, we perceive that the face of the country is more level, and contains more extensive plains than any other part; and that the hills are lower and less frequent towards the confines of Bœotia, and Mounts Parnes, Brilessus, Pentelicus, and Hymettus. This portion then of Attica is naturally called *Πεδίον*[2], but its coast is frequently designated [343] by a peculiar name, *Ἀκτή*; and it is in this part that Athens[3] is si-

[2] Harpocrat. and Suid. in v. Πεδιακά. See Kuster ad Suid. and Albert. ad Hesych. tom. ii. p. 898. The name Πεδίον is found in Thucydides, ii. 55 and 56, where it is opposed to Πάραλος γῆ, in Isæus, de Dicæogen. hered. p. 53. 5. Steph., and in Demosth. p. 1187. It is also worth while consulting Wheler's Tour, (p. 387. French translation,) for although that writer does not adduce the testimonies of the ancients, yet his information respecting the soil and geography of Attica is valuable, as proceeding from an eye-witness.

[3] Hence Ægeus, to whom Athens and the neighbouring parts were allotted in the division of Attica, is said by Sophocles (whose words I shall presently quote) to have received Ἀκτή. See Harp. and Suid. in v. Ἀκτή. Steph. Byzant. p. 55. ed. Pined. and Holsten. in loc. p. 21. Platner, therefore, is mistaken in supposing (de Gentt. Atticis earumque cum tribubus nexu, (Marburg. 1811.) p. 8. that the whole coast from Sunium to the Isthmus was called Παραλία. Wherever this coast near the city is called Παραλία, as it is by Strabo, ix. p. 400. and others, the name must be understood as general, and not peculiar to that particular part of the coast.

tuated. The region from Parnes to the town of Brauron, or perhaps a little lower, to mount Hymettus and the promontory of Cynosura, received the appellation of *Διακρία*, derived from the chains of hills which every where intersect this part of the country [4]. Here are situated Parnes, Brilessus, Pentelicus; and the towns of Rhamnus, Tricorythus, Marathon, Brauron. The southern part of Attica, below mount Hymettus and the promontories of Zoster and Cynosura, extend down as far as Sunium [344] in the form of a tongue. Being washed on both sides by the sea, it obtained the name of *Πάραλος* or *Παραλία*, and comprised Lampra, Laurium, Thoricus, Potamus, Prasiæ [5]. It is to this natural division of Attica, that the account given by the poets of the distribution of the empire between the sons of Pandion evidently alludes. The following lines are spoken by Ægeus in the lost play of Sophocles which bears that name [6]:—

> Πατὴρ δ' ἀπελθεῖν ὥρισ' εἰς Ἀκτὴν ἐμοὶ,
> πρεσβεῖα νείμας τῆσδε γῆς· τῷ δ' αὖ Λύκῳ
> τὸν ἀντίπλευρον κῆπον Εὐβοίας νέμων,
> Νίσῳ δὲ τὴν ἀνόμαλον ἐξαιρεῖ χθόνα
> Σκείρωνος ἀκτῆς· τῆς δὲ γῆς τὸ πρὸς νότον
> ὁ σκληρὸς οὗτος καὶ γίγαντας ἐκτρέφων
> εἴληχε Πάλλας.

Of these portions, that allotted to Nisus is Megaris, which all accounts describe as having been a part of Attica previously to the Dorian migration. Of the remaining three, the part said to have been awarded to Pallas is Paralia,

[4] Hesych. in v. Διακρεῖς, ibique Alberti, tom. i. p. 947. One might conjecture from Herodotus, i. 59. that the inhabitants of Diacria, commonly called Diacrii, were also termed Ὑπεράκριοι, because with reference to the Parali and Pediæi they might be said to dwell *beyond* the mountains. Palmer's explanation of these names, ἀπὸ ταῖν δυεῖν ἄκραιν (Sunium and Cynosura), and ἀπὸ τοῦ ὑπὲρ τὴν ἄκραν (Sunium) οἰκεῖν, is irreconcilable with the testimony of the ancients.

[5] Stephan. Byzant. p. 527. Suidas in Πάραλοι and Παράλων, Hesychius in Λαμπρά. Compare Thucyd. ii. 55. who makes an evident distinction between the left portion of Paralia, in which Laurium was situated, and the right, which faces the islands Eubœa and Andros.

[6] Sophocl. Fragm. ap. Strabon. ix. p. 392.

and that to Lycus, Diacria, the whole of which extends itself opposite to Eubœa. The level district fell to the share of Ægeus, the coast of which, where Athens is situated, was called *Ἀκτὴ*, and the midland *Πεδίον*, as I have already observed. Ægeus, however, designates the whole of his territory by the name of that portion of it which contained the seat of empire, Athens[7].

[345] I have premised these remarks in order that the subject which I now proceed to discuss may be more fully and readily understood. For, of those names which the tribes are said to have borne previously to the time of Ion, there are four, which may be easily recognized as identical with those which were used in later times to designate the divisions of Attica. These names were, Cecropis, Autochthon, Actæa, Paralia, said to have been given to the tribes by Cecrops; and Cranais, Atthis, Mesogæa, Diacris, by Cranaus[8]. That Mesogæa, i. e. *midland*, is the same as Pediæa, it is unnecessary to observe[9]. It is evident that those writers, who state these to have been the names of tribes, had in view the above districts, and imagined that the division of the former was connected with the different situations of the latter. This may also be proved from a passage of Stephanus of Byzantium, who, alluding to the history of the Pandionidæ, calls Diacria, which was allotted to Pallas, *φυλὴ τῆς Ἀττικῆς*[1].

[7] That the ancients also entertained the same opinions respecting this division, is evident from the words of the Scholiast on Aristoph. Vesp. v. 1218. *Τὴν δὲ χώραν τὴν Διακρίαν Πανδίονα φασὶ, τοῖς υἱοῖς διανείμαντα τὴν ἀρχὴν, Λύκῳ δοῦναι, Αἰγεῖ δὲ τὴν περὶ τὸ ἄστυ, Πάλλαντι δὲ τὴν Παραλίαν, Νίσῳ δὲ τὴν Μεγαρίδα.*

[8] Julius Pollux, viii. 109. See Steph. Byzant. p. 55. and Eustath. ad Dionys. ap. Meurs. Regn. Att. lib. i. cap. 7. As tradition says that Actæus was also one of the ancient kings of Attica, it is questionable whether those authors, on whose authority Pollux and others have given an account of this division of the tribes, considered the name Actæa derived from him or from the district *Ἀκτή*.

[9] Perhaps it is this tribe Mesogæa, which is called by others *Πεδιάς*. In Steph. Byzant. p. 538. we read, *ἔστι δὲ καὶ Πεδιὰς φυλὴ τῆς Ἀττικῆς*.

[1] Steph. Byzant. in *Διακρία*, p. 235. The author whom Stephanus follows differs from Sophocles in assigning Diacria to Pallas, which the poet awards

[346] It is plain, then, who the Diacrii, Pediæi, and Mesogæi were believed to have been. And for my own part, I have no doubt that the Actæi derived their name from the territory, Ἀκτὴ, in which they resided, though there is said to have also been a king called Actæus. The names Cecropis, Cranais, and Atthis, the ancients undoubtedly deduced from Cecrops, Cranaus, and his daughter Atthis. We cannot, however, avoid being surprised at so singular an anomaly, as that two tribes should be called after the district where they had settled, viz. Paralia and Actæa, while at the very same time the other two should bear the names of Autochthon and Cecropis, derived from their origin or from the name of one of their chiefs: and again, that afterwards Diacria and Mesogæa should be designated by the names of their respective districts, but Cranais and Atthis by those of a king and a king's daughter. Thus of the first four, Autochthon and Cecropis must have designated the Mesogæi and Diacri; and of the last four, Cranais and Atthis, the Actæi and Paralii. Now surely it is almost inconceivable, that those who were formerly named from their origin or chiefs, should afterwards be named from the district in which they had settled; while those who were first named from their district, should afterwards be called after their chiefs. This is so unparalleled a transposition, that it would be very difficult to assign any probable cause for its occurrence. We may add, that as Cecrops founded his city in the district of Ἀκτὴ, it was but natural that the settlers in Ἀκτὴ rather than those in Diacria or the midland region should have derived their name from him. Other arguments I shall omit, deeming it unnecessary to prosecute the subject too curiously.

For my own part, I feel convinced, that all the stories

to Lycus. But the fact is, these fables were told in different manners by different authorities, as Strabo himself testifies, ix. p. 392. I would observe too, that he has forgotten that in those early times, *that* division of tribes did not exist, but a very different one, instituted by Ion, did I not think it lost labour to pay too much attention to the chronology of fabulists.

about the tribes of Cecrops, Cranaus, and Erechtheus, [347] are not founded on any historical records or authentic traditions of those ancient times, but owe their origin solely to the ingenuity of those, who, in later ages, undertook to explain the fables of the early poets, and in so doing interpreted them according to their own caprice and prejudices. Attica abounded, in the earliest times, with fabulous accounts of the origin of its people, the foundation of its commonwealth, the invention of its arts, and the establishment of its laws. The greater part, however, of these fables have long since fallen into oblivion. The few which have survived to the present time, we derive, not from the poets, but from the works of the writers on fable, who for the most part appear to have selected only such as had been celebrated in the song of the more popular poets, and to have omitted those which appeared less worthy of preservation, as being the productions of inferior bards. There were undoubtedly many fables of the most remote antiquity, the authors of which were entirely unknown to posterity, and which, having never been consigned to writing, nor extensively known, lived for a little while in the mouth of a few, till they gradually sunk into utter oblivion. Such, I conceive, were those exceedingly ancient fables, which we know to have been once current respecting Porphyrion, Colænus, and other kings of Attica, anterior to the age of Cecrops[2]. In those, however, which are exstant at the present day, there is not the slightest vestige which could induce us to suppose that the ancient poets left any traditions concerning the abovementioned division of the tribes. Hence we may perhaps infer, that the stories about them emanated from some fables, now lost, descriptive of the exploits and institutions of Cecrops and Cranaus—an inference which I was myself once inclined to make, but subsequently rejected, from the consideration that all accounts concur

[2] Pausan. Attic. cap. 14. 6. and 31. 3.

in stating, that not particular portions of the territory or people of Attica, but the whole of both these were originally [348] called after the names of Atthis, Cecrops, Cranaus, and even Actæus[3]: the whole amount of which statement merely is, that the poets made use of these names to that effect. Cranaus, which is in reality an adjective, was first used by the poets as a proper name, and afterwards, to account for its origin, a king so called was fictitiously introduced into the popular accounts of the early times. Similarly, *Ἀκτὴ* properly designated a certain district of Attica; afterwards the whole coast was thence called *Ἀκταία*; and to suit this appellation the poets fabled the existence of a king Actæus[4]. And although there never were such persons as Cecrops and Atthis, yet these names must undoubtedly have had their origin in some ancient tradition, which testified that the Athenians were of old denominated Cecropes* or Cecropii, and Attica Atthis[5]. And I see no reason to doubt in the truth of such tradition. It seems, however, less probable on that very account, that any ancient poet should have arbitrarily and capriciously assigned to single districts (especially by the strange anomaly already mentioned) those names, which all others, in conformity with this tradition, assigned to the whole of Attica and its inhabitants collectively. Upon these considerations, therefore, it appears most natural to surmise, that the whole account of these tribes emanated from some of those writers, [349] who compiled accounts of the anti-

[3] See the authors quoted by Meursius, Regn. Att. lib. 1. capp. 6, 7. 13, 14.

[4] Philochorus has passed a most correct judgment on these fabulous heroes, according to Eusebius: *Τὸν γὰρ μετὰ Ὠγυγον Ἀκταῖον ἢ τὰ πλασσόμενα ὀνομάτων οὐδὲ γενέσθαι φησὶ Φιλόχορος.* See Heyne ad Apollodor. Obss. p. 320.

[* Cecrops is probably only a transposition of *κέρκωψ, a grasshopper*, the well-known emblem of Athenian *αὐτοχθονία*. See a very ingenious paper in the Cambridge Philological Museum, vol. ii. p. 357, seq.]

[5] About *Atthis* no doubt can be entertained. On Cecrops, see Buttmann, Lexilog. p. 67.

quities of the Attic nation from the fables of the poets; and of whom several are quoted and referred to, by the Grammarians especially[6]. Some one of these, then, being aware that the tribes, as they remained till increased by Clisthenes, were not instituted previously to the age of Ion, and desirous of ascertaining how the people had been divided before that time, bethought himself that he had frequently read, in poems about Cecrops and Cranaus, of the Autochthones, the Cecropidæ, the Cranai, the Actæi, as well as of Mesogæa, Paralia, Diacria, Atthis; and fancied that he could detect, in this diversity of names, the very division of the people and the tribes which he was looking for.

The same observations will apply to those names also of the tribes which are said to have been invented by Erichthonius, *Διὰς*, *Ἀθηναΐς*, *Ποσειδωνιὰς*, *Ἡφαιστιὰς*, from Jove (*Ζεὺς*, *Διὸς*), Minerva (*Ἀθηνᾶ*), Neptune (*Ποσειδῶν*), Vulcan (*Ἥφαιστος*). From the name of Minerva the whole Athenian people are called, as is universally known. Strabo informs us[7] that by the poets at least Attica was likewise called *Ποσειδωνία*, from Neptune; nor is it difficult to trace the reason, from the fables of antiquity. The Athenians might with still greater propriety have derived their name from Vulcan, since they boasted of being Autochthones; for the latter were the reputed sons of Vulcan and Earth, as were Cecrops and Erichthonius[8]. And hence, as it would seem, Æschylus has called the Athenians [350] *παῖδες Ἡφαίστου*[9]. But the reason why they should have been

[6] See Heyne, ut sup. p. 319.

[7] Lib. ix. p. 397.

[8] Respecting Cecrops, see Hyginus, fab. 158, with which compare fab. 48. ap. Meursium de Regn. Attic. i. cap. 6. See also Eustathius ad Iliad. B. 547. p. 214. Basil. On those who consider Cecrops an Egyptian, see, besides Meursius ut sup., Hemsterhuis ad Aristoph. Plut. Schol. v. 773. p. 262. ed. Lips. On Erichthonius, see Meursius, ut sup. ii. c. 1, and Harpocrat. in *Αὐτόχθονες*. The reader should also refer to Plato's Timæus, p. 23. E.

[9] Eumenid. v. 13. This appears to me the true explanation of the passage, though several others are given.

called after Jupiter by the poets, is not so evident from any vestiges of ancient fable now extant. It seems, however, tolerably certain, that some supposed connexion must have existed between the two; and of such I believe the ancient traditions make no mention. It is indeed possible to account for the circumstance from a story about Jupiter, related by one of the Grammarians; viz. that after having grown up in Arcadia, or, as others say, in Crete, he first visited Athens, and there first obtained divine honours under the appellation of *ΖΕΥΣ ΠΑΤΡΩΙΟΣ*[1]. Now it is by no means improbable that some poet, following this tradition, might have designated the Athenians as *the people of Jove;* although there may very possibly have been other stories in fables now lost, from which the Athenians obtained this name.

But we will now proceed from the discussion of these obscure and uncertain fables, to the true and undoubted division of the tribes which prevailed, with a few alterations, from the most ancient times till the age of Clisthenes, and was even transferred into Asia by colonies from Attica. [351] The names of these tribes were the *Γελέοντες*, (or, according to others, *Γεδέοντες*, or *Τελέοντες*,) *Ὅπλητες*, *Ἀργαδεῖς*, *Αἰγικορεῖς*. On the form and signification of these names, and indeed on the general nature of the tribes which they designate, the accounts of the ancients are as various as the opinions of the moderns, with the exception of one point, which appears to be admitted by all, viz. that this division of tribes must be referred to the time of Ion—which proves that the ancient traditions concurred in this respect. In

[1] Schol. ad Aristoph. Nub. v. 1470. *Πατρῷος Ζεὺς καὶ Ἀπόλλων ἐν Ἀθήναις τιμῶνται, ὁ Ζεὺς μὲν μετὰ τὴν ἐν Ἀρκαδίᾳ, ἢ, ὡς ἕτεροι, μετὰ τὴν ἐν Κρήτῃ ἀνατροφήν, ὅτε πρῶτον ταῖς Ἀθήναις ἐπέστη καὶ ἐφάνη τοῖς πατράσιν αὐτῶν, οἵτινες ταύτῃ τῇ προσηγορίᾳ τετιμήκασιν αὐτόν.* Another Scholiast writes as follows: *Οὕτω τιμᾶται παρ' Ἀθηναίοις Ζεὺς πατρῷος καὶ Ἀπόλλων, διὰ τὸ πρώτους ὑποδέξασθαι τὸ θεὸ εἰς τὴν χώραν, καὶ θυσίας συντελέσαι κατὰ φρήτρας καὶ δήμους καὶ συγγενείας μόνους τῶν Ἑλλήνων.* See, however, the modern commentators on the above passage of Aristophanes, and Albert. ad Hesych. tom. ii. p. 894.

asserting, however, that Ion was the author, they merely testify, if we divest their account of its fabulous dress, that this division of tribes originated subsequently to the migration of the Hellenes from Thessaly into Attica, and their connexion with the former indigenous inhabitants, when the people of Attica were called Ionès, and the territory Ionia. Now although the poets gave various accounts of these events, yet all seem to have agreed in the belief that these Hellenes did not make any hostile invasion into Attica to take forcible possession of it, nor usurp the land by the ejection of its original inhabitants; but that being exiled from their own country they were kindly received by the Athenians, and by intermarriage became so united with them, that one people was formed out of the two nations, and was thenceforward called by the name of the Ionès. Tradition says[2], that Xuthus, the son of Hellen, was received by Erechtheus into his kingdom, on account of the distinguished service he had rendered in the war with the Eubœans, and that Ion was his son by Creusa, the king's daughter. Afterwards, when the population had increased, a colony was led by Xuthus, or, as most accounts relate, by Ion, to Ægialea, which also assumed from that time the [352] name of Ionia[3]. Lastly, the Ionès are said to have been ejected

[2] See particularly Eurip. Ion, v. 1—75. and v. 1571—94. Strabo, viii. p. 383. Apollod. 1. 7. 3. Pausan. Achaic. c. 7. Compare Meursius, Regn. Attic. ii. cap. 8. 10. 13. 14. Heyne, ad Apollod. Obss. p. 40. and 340. Hülsemann de Myth. Attic. (in his edition of Eurip. Ion,) p. 31, seq.

[3] Hüllmann, however, is of opinion (Orig. Græc. p. 120.) that they were afterwards recalled, when the Athenians were hard pressed in a war with the Eleusinians, and that they took that opportunity of possessing themselves of Attica, after which event the Athenians were called Ionès, after the name of the conquerors. The authorities whom he cites are Herod. viii. 44. Strabo, viii. 588. (383). Pausanias, vii. 1. But in the first place, Herodotus merely states that Ion was Στρατάρχης of the Athenians, and that they were thence called Ionès, but does not specify either the time or the occasion. Again, Strabo does not assert that the Ionès were recalled from Ægialea on account of the war with the Eleusinians, but that after the successful termination of that war a colony was dispatched from Attica to Ægialea, on account of the increased population. Pausanias indeed tells us

from their settlements in Ægialea by the Achæans, and to have returned to their relations in Attica; where they remained for a short time, and thence emigrated to the coast of Asia Minor, which thenceforth assumed the name of Ionia. Every one is aware, that after that event the Athenians repudiated the name of Iones, though it originated with themselves; and Herodotus is of opinion[4] that they were in a manner ashamed of assuming it, probably because they considered it a disgrace for an indigenous race, which particularly prided itself upon its *αὐτοχθονία*, and unmixed blood, to bear a name in common with an adventitious and vagabond people. For these reasons I cannot concur in the opinion of those who hold that Attica was forcibly occupied, and its ancient inhabitants compelled to pay tribute, by the Iones, (or rather the Hellenes, since that name did not exist previously to their combination with the ancient Attics), and that from the latter circumstance the tribe *Τελέοντες* derived its name, *ἀπὸ τοῦ τελεῖν*. [353] They likewise maintain that these usurpers continued to hold the upper hand till the time of Solon[5]. If, however, this account were true, we might with some reason wonder that the fact should not be mentioned by any ancient writer, and that none of them should have ever suspected that slavery was imposed on the indigenous inhabitants by these adventitious usurpers. Had this state of affairs really continued till the time of Solon, I cannot conceive that all tradition of the circumstance should have been

that Ion returned from Ægialea, and died in Attica; but he does not assert that the Attics then received the appellation of Iones, nor that they were subdued by them.

[4] Lib. i. cap. 143.

[5] Those who hold this opinion adduce in confirmation of it a passage in Plutarch, (Solon, c. 13), where not one word is said of the migration of the Hellenes into Attica, the division of the tribes, or their names. It is merely stated, that in the time of Solon the poorer classes were subjected to the rich:—*ἦ γὰρ ἐγεώργουν ἐκείνοις, ἕκτα τῶν γενομένων τελοῦντες, ἢ χρέα λαμβάνοντες ἐπὶ τοῖς σώμασιν, ἀγώγιμοι τοῖς δανείζουσιν ἦσαν, κ. τ. λ.* But what has this to do with the Hellenes or Iones, or with the nature of the tribes?

obliterated or corrupted in subsequent times. We must not, moreover, forget, that the ancient family of the Erechthidæ are said to have retained possession of the kingdom, which it had held previously to the immigration of the Hellenes, till the time of Melanthus the Messenian[6]; since it cannot be doubted but that the Hellenes, had they usurped Attica and subjected the ancient possessors to their power, would also have wrested the empire from the ancient kings and transferred it to their own nation.

But to return from this digression, I have remarked that the ancients themselves entertained different opinions respecting the names and nature of the tribes which were instituted subsequently to the connexion of the Hellenes with the original inhabitants of Attica. For, in the first place, the Γελέοντες are by some called [354] Γεδέοντες, and by others Τελέοντες[7]; varieties so trifling, that it is easy to see how readily they might have been interchanged, and how naturally the ancients themselves might have been mistaken, when these names became abolished at Athens, and the nature of the original tribes generally forgotten. No doubt can now remain as to the genuine orthography of the word, because it is more than once distinctly written Γελέοντες on the Cyzicene Marble[8]; the form which Herodotus, the most ancient writer, likewise used, if we may trust the authority of all the MSS. except two or three. It is surely improbable that the Cyzicenes should have either been ignorant of the true names of their tribes, or arbitrarily and capriciously changed them, and so changed them as to adopt, instead of the genuine ancient form, a new one, as obscure

[6] Those too, who maintain that Xuthus and Ion reigned in Attica, do not state that they did so as usurpers, nor to the exclusion for the future of the Erechthidæ. See Heyne ad Apollodor. p. 340. Most writers, however, do not consider Xuthus and Ion to have been kings.

[7] Γελέοντες is found in Herod. v. c. 66; Γεδέοντες in Plutarch, Solon. c. 23; and Τελέοντες in Eurip. Ion. v. 1579. Pollux, viii. 111. Steph. Byzant. in Αἰγικορεῖς, where however some MSS. have Γελέοντες.

[8] Cayl. Recueil d'Antiquitées, T. ii. Tab. 59, 60—2.

in meaning as unsupported by analogy. Yet those who contend that *Τελέοντες* was the original name, and *Γελέοντες* a more recent form from *Γέλεως*, *Γεώλεως*, i. e. *λεὼς γεωργικός*—an unexampled formation—endeavour us that such was the case. In the same Marble we find *Αἰγικορεὺς*, and its plural *Αἰγικορεῖς*, for which Euripides uses the Attic form *Αἰγικορῆς*; *Ἀργάδεις*, not *Ἐργάδεις*, as in Plutarch; and *Ὅπλητες*, not *Ὁπλῖται*, as Plutarch likewise has[9].

[355] The meaning of these names is a subject of no less dispute. It is indeed evident that the three terms *Ὅπλητες*, *Αἰγικορεῖς*, and *Ἀργαδεῖς* were given to the tribes they respectively represent, from their manner of life. *Ἀργαδεῖς*, however, is obscure, and *Γελέοντες*, it would seem, almost inexplicable. Plutarch tells us that the *Ὁπλῖται* were the *τὸ μάχιμον*, *Ἐργάδεις* the *τὸ ἐργατικόν*, *Αἰγικορεῖς* the *διατρίβοντες ἐπὶ νομαῖς καὶ προβατείαις*, and the *Γεδέοντες* (thus he writes the word) the *γεωργοί*. Strabo says that the Athenians were divided, according to their various professions, into priests (*ἱεροποιοί*), soldiers (*φύλακες*), husbandmen (*γεωργοί*), artizans and hired workmen (*δημιουργοί*)[1]. He therefore recognizes no tribe of shepherds, but mentions instead of them the

[9] Herodotus (ut sup.), mentioning the sons of Ion, from whom these names used to be derived, has the genitives *Αἰγικόρεος* and *Ἀργάδεω*, from the nominatives *Αἰγικόρης* of the third, and *Ἀργάδης* of the first, declension. These, then, were the names assigned them in ancient fables. It does not, however, therefore follow that the tribes also were anciently called *Αἰγικόρεις* and *Ἀργάδαι*, much less *Ἀργάδεις*, as some have thought. *Ἀργαδῆς* is found in Euripides, which proves that in the Marble *Ἀργαδεῖς* should be read.

[1] Some however are of opinion that Strabo classified the different tribes and occupations without perceiving the self-evident fact that three at least of their names distinctly designate those occupations. I think that this opinion imputes a carelessness upon that diligent and accurate writer which he by no means merits. The words of Strabo are these: *ὁ δὲ Ἴων πρῶτον μὲν εἰς τέσσαρας φυλὰς διεῖλε τὸ πλῆθος, εἶτα εἰς τέσσαρας βίους*, which appear to me to mean, that Ion first divided the people into four tribes, and then assigned them their respective occupations—to one the priesthood, to another military service, to a third agriculture, and to the fourth all kinds of handicraft and work for hire.

priests, of which Plutarch takes no notice. What then? Are we to infer, as some[2] appear to have done, that Strabo took the *Αἰγικορεῖς* for priests? [356] This, I think, is an absurdity. Neither do the names *Ὅπλητες* or *Ἀργαδεῖς* suit the order of priests. It only remains, therefore, to suppose that in the opinion of Strabo the *Γελέοντες* were the priests—an opinion which appears to me much more probable than that of Plutarch. For it is evident that Plutarch, or the authors he followed, drew their conjectures about the occupations which the tribes pursued, from the signification of their names. From the three first they could only have drawn the inference which they have done; but supposing the name *Γεδέοντες* or *Γελέοντες* to be derived from *γέα* (and who is not aware of the etymological minutiæ of the Greeks?) they concluded that the tribe which bore that name must have been husbandmen, especially since the state could not possibly do without that important class, and the other tribes had already had their respective professions assigned them. As, however, Strabo makes the *Αἰγικορεῖς* husbandmen, contrary to the proper signification of the word—it being evident that he considers the *Ἀργαδεῖς* as *δημιουργοὶ*, and the *Ὅπλητες* as *φύλακες*—and the *Γελέοντες* priests, a meaning which he could neither have derived from its etymology nor the common vocabulary of the Greek language, since it does not recognize the word; such, I say, being the case, we can only conclude that he followed some ancient tradition, according to which the *Αἰγικορεῖς* were not only shepherds, as the name implies, but husbandmen also, and the *Γελέοντες* priests[3].

[2] Musgrave ad Eurip. Ion. v. 1577. who thinks that in this respect also Strabo has shewn better judgment than Plutarch, and that Euripides favours his explanation, by deriving *Αἰγικορεῖς ἀπὸ τῆς Αἰγίδος*, from the shield of Minerva.

[3] Although the name *Γελέοντες*, which does not occur elsewhere, were incapable of explanation, yet I do not think this sufficient reason for questioning the authority of Strabo. But why should we not acquiesce in the natural interpretation of the word suggested by Hemsterhuis, who derives it from the obsolete *γελεῖν*, explained by Hesychius (tom. ii. p. 811. Albert.)

[357] I perfectly agree with those who imagine that all the Grecian states were originally under the control of their priests. The numerous testimonies of the ancients themselves leave no room to doubt that the principles of civilized life, the worship of the gods and religious observances, agriculture and the arts, laws and civil society, were introduced among the ancient inhabitants of Greece by strangers from Asia or Ægypt. There is much probability in the ancient tradition that the king who first taught his barbarous subjects to worship the gods, to contract lawful marriages, to observe the rights of families, and to unite in civil society by exchanging their scattered abodes for towns and villages, was an Ægyptian. It almost naturally follows, that such adventurers from foreign lands should have been held in the highest honour and estimation by the rude natives; that they should have held the sovereignty and controlled the priesthood, which was next in dignity to the regal authority; that they should have built temples in every part of the country, and that a few straggling habitations congregated around these should have formed the core of new villages, towns, and cities. Hence certain districts of land were either consecrated to the gods or allotted for the exclusive maintenance of the priests, and of the unemployed multitude many would devote their services to the cultivation of these districts, and thus place themselves as clients, or vassals, or tenants, under the immediate protection and patronage of the priests. And although there might be independent land-holders in the community, [358] yet they would not hold any very high place among the others, but be subject in all things to the authority of the priests.

λάμπειν, ἀνθεῖν? thus the Γελέοντες would mean *the Illustrious*. This interpretation has been approved, amongst others, by Creuzer, Mytholog. tom. iii. p. 62. Wesseling, too, who at first inclined to the form Τελέοντες, subsequently altered his opinion and assented to Hemsterhuis, being induced by the authority of the Cyzicene Marble. See his Dissert. Herod. p. 164. and on Herod. v. 66.

While affairs were in this situation in Attica, the Hellenes, a warlike nation, exiled from their native country and in pursuit of other settlements, introduced themselves suddenly among the original inhabitants. Having rendered important services to the king of the country in a war against the Eubœans, they were allotted certain districts in Attica, in which they founded the four towns Oenoe, Marathon, Probalinthus, and Tricorythus [4]. Subsequently, when they began to connect themselves more intimately with the natives, the state, as originally constituted, must necessarily have undergone some important alterations. The Hellenes had also their great men and their powerful chiefs, who, indignant at the idea of being compelled to live in their new settlements in a more humble condition than they did in their old, and of being degraded from nobles to plebeians, naturally endeavoured to procure for themselves some share in the government, which had hitherto been held exclusively by the order of priests. The latter, fearing to deny what they knew they had not the power to refuse, or compelled by necessity, so shared their power with the new claimants, that they retained for themselves the sovereignty and the priesthood, but consigned to the Hellenes the entire conduct of their military affairs [5], [359] while in all other respects they were on equal terms. Hence arose two orders of chiefs, the *Γελέοντες* and *Ὅπλητες*, and the remaining multitude were divided into two more classes. Some of

[4] Strabo, viii. p. 383.

[5] As Xuthus was admitted into Attica, with his followers, on account of the services which he rendered Erechtheus in the war with the Eubœans, and as his son Ion is said to have also conducted the war against the Eleusinians (Strabo ut sup. Herod. viii. 44.) nothing can be more probable than that the Hellenes were made *Ὅπλητες*. No one can possibly imagine that they were at once allowed to participate in the dignity of the sacerdotal order. And if Plato be admitted as authority—for some, rightly as I think, suppose that he follows tradition, and does not merely invent his account of the history of ancient Athens—we are told in the Timæus, p. 24. A. B. that among the early inhabitants of Attica, as in Ægypt, the order of the priests was separated from the military.

these, consisting principally of the Hellenes, though ignoble plebeians, were nevertheless free land-holders, and devoted their time partly to agriculture, but chiefly, in all probability, and especially those in the mountainous districts, to the care of cattle. These constituted the *Αἰγικορεῖς*. The remainder, the tenants and clients of the *Γελέοντες* and *Ὅπλητες*, were comprehended in the tribe *Ἀργαδεῖς*[6].

This division of tribes was not unlike the *Castes* of some oriental nations; a circumstance which confirms the remark of Thucydides, that anciently the manners and customs of the Greeks bore a strong resemblance to those of the barbarians[7]. But the disposition of the Greeks, naturally free and impatient of control, was not likely to permit them long to endure such a restraint. In process of time, especially when the members of each tribe had become more intimately connected with each other by intermarriage, the former distinction of their respective occupations began to be infringed and neglected; and thus, for example, those who belonged properly [360] to the tribe of the *Ὅπλητες*, were, through their connexion with many of the *Γελέοντες*, ultimately admitted to the order of the priesthood; and similarly many of the *Γελέοντες* preferred and followed a military life. So also some of the *Ἀργαδεῖς*, having amassed considerable property, purchased their freedom from their patrons, or became land-holders from hirelings. Again, other individuals of the tribe *Αἰγικορεῖς*, overwhelmed with debt or oppressed by the tyranny of the powerful, attached themselves as clients to the service of the nobles. This gradual infringement upon the distinction of the tribes ultimately

[6] This opinion respecting the origin and nature of the early tribes has probability in its favour, and is confirmed also by the authority of the ancient writers, which is more than can be said of the views lately put forth on this subject by two great scholars. I do not intend to waste time in refuting every point on which I differ from them; enough has been said for the reader to form his own estimate, by comparing my own with their opinions, and to draw his conclusions from the arguments respectively adduced.

[7] Thucyd. i. 6.

extended itself so far, that nobles and plebeians, free landholders, clients, and mercenaries, became indiscriminately mixed, and no longer distinguished as members of any one particular tribe. Thus, when the various professions became confused and intermingled with each other, the names indeed remained unaltered, but their signification was no longer consistent with the true state of affairs. Hence arose a new classification, of which Theseus was traditionally the author. The first order now comprised the *Εὐπατρίδαι*, nobles or patricians, who held nearly the same rank and enjoyed the same rights as the Geleontes and Hopletes previously to the confusion of the tribes. The second order were called *Γεωμόροι*, who were landholders, and succeeded in part to the *Αἰγικορεῖς*; the third *Δημιουργοὶ*, in which all clients and mercenaries were classed[8].

According to this division of the people into three orders, each tribe was subdivided into three parts, called *ἔθνη*, *τριττύες*, or, more usually, *φρατρίαι*[9]. Each tribe had consequently one *φρατρία* of *Εὐπατρίδαι*, [361] one of *Γεωμόροι*, and one of *Δημιουργοί*. Again, each phratria contained thirty clans (*γένη*), and each clan as many families[1]. And the very circumstance of there being a

[8] See the Introduction, p. 4.

[9] Pollux viii. 111. *Ὅτε μέντοι τέτταρες ἦσαν αἱ φυλαί, εἰς τρία μέρη ἑκάστη διῄρητο· καὶ τὸ μέρος τοῦτο ἐκαλεῖτο τριττύς, καὶ ἔθνος, καὶ φρατρία.* ——*τρία δὲ ἦν τὰ ἔθνη πάλαι, Εὐπατρίδαι, Γεωμόροι, Δημιουργοί.* Harpocration in v. *τριττύς*: *τριττύς ἐστι τὸ τρίτον μέρος τῆς φυλῆς· αὕτη γὰρ διῄρηται εἰς τρία μέρη, τριττῦς* (thus read) *καὶ ἔθνη καὶ φρατρίας, ὥς φησιν Ἀριστοτέλης ἐν Ἀθηναίων πολιτείᾳ.* Suidas in *φράτορες*: *φασὶ δὲ τὸ αὐτὸ ἔθνος εἶναι ἢ τριττύν, ἤτοι φρατρίαν.* And this is in reality the sense which the words of Pollux and Harpocration, or rather Aristotle, convey, and Salmasius is wrong in endeavouring to explain them otherwise, obs. ad I. A. et R. p. 112. seq. Compare Harpocration in *γεννῆται*. In the time of Demosthenes and Æschines, indeed, the *τριττύες* differed widely from the phratriæ, being thirty in number, and a division connected with the trierarchies. See Demosth. de Symmor. p. 184. Æschin. adv. Ctesiph. p. 425. But what has this to do with the times of which we are now speaking?

[1] Pollux, ut sup. *ἑκάστου δὲ ἔθνους γένη τριάκοντα, ἐξ ἀνδρῶν τοσούτων, ἃ ἐκαλεῖτο τριακάδες.* See Harpocration and Suidas in v. *γεννῆται*. There can be no doubt but that *ἄνδρες* in Pollux means *the heads of families*. It would be both tedious and unnecessary to inquire

definite number of phratriæ, clans, and families, in itself shows most unequivocally that the whole principle of this classification was not only derived from natural connection, but also regulated by law and by right, as the ancients themselves expressly testify, by defining those of the same clan (*γεννῆται* or *ὁμογάλακτες*) to be *γένει μὲν οὐ προσήκοντες, ἐκ δὲ τῆς συνόδου οὕτω προσαγορευόμενοι.*

[362] This division of the people into tribes, phratriæ, and clans, remained even after Solon's legislation, although he altered the ancient form and condition of the orders, and made a more equitable distribution of rights among the citizens. He first emancipated all those, who hitherto, either from ancient custom or the tyrannical oppression of their masters, had been in the service of the powerful as clients, and compelled to cultivate for a wretched pittance the lands of their patrons—of which degraded class there were at that time a vast number[2]. Others,

into the first and natural origin of these divisions: indeed it is now impossible to determine with accuracy how much they owed to nature and how much to law and civil right. I purposely therefore omit the extracts from Dicæarchus preserved by Stephanus of Byzantium, which do not prove what was really the case, but what Dicæarchus conceived to be so. Besides, Dicæarchus did not confine his enquiries to the republic of Attica, but made them general.

[2] Plutarch, Solon. c. 13. *Ἅπας μὲν γὰρ ὁ δῆμος ἦν ὑπόχρεως τῶν πλουσίων. Ἢ γὰρ ἐγεώργουν ἐκείνοις ἕκτα τῶν γινομένων τελοῦντες, ἑκτημόριοι προσαγορευόμενοι καὶ θῆτες, κ.τ. λ.* I am of opinion that the statement of Plutarch respecting the *ἑκτημόριοι* is incorrect; and Hesychius, who follows him (in v. *Ἐπίμορτος*, tom. ii. p. 1369.) has propagated the error. If these vassals paid only a sixth part of the produce of the lands which they cultivated, and kept five themselves, in truth I think they were better off than their Lords, even supposing that they had to provide the necessary implements of husbandry, &c. from their own resources—which is the opinion of Schæfer, ap. Platner. de gent. Att. p. 8. For these implements, when once procured, would last for a considerable time, and be bequeathed to their posterity at the death of the original purchasers; nor would any great expense be required to keep them in good repair. I am therefore inclined to coincide with those who think that they *paid* five parts and *kept* one themselves. That some have conceived this to be the case is evident from Hesychius, i. p. 1152. *Ἑκτήμοροι: οἱ (ἐπὶ) ἕκτῳ μέρει τὴν γῆν γεωργοῦντες*, and from Eustathius ad Odyss. xix. 28. p. 680. 49. Basil. 1854. Rom. *ἐθνικὴ δὲ λέξις καὶ ἡ μορτὴ, τὸ ἕκτον φασὶ μέρος τῶν καρπῶν, ἣ ἐδίδοτο τοῖς ἑκτημορίοις, ὡς ἐν ἀνωνύμῳ κεῖται λεξικῷ ῥητορικῷ.*

who were deeply involved in debt, and being at the mercy of their powerful creditors, were occasionally even sold into foreign lands, he reinstated in their original rights by a total remission of their debts; and lastly, extended a share in the administration of the state, which had before been exclusively in the hands of the Eupatridæ, to the rest of the citizens, so that each one had [363] his peculiar rights and duties assigned him no longer by the splendour of his birth but by the amount of his fortune. Thus when fortune was made the criterion of the classes, the original difference between the orders was abolished, and the very names gradually fell into disuse.

We must not, however, suppose that the people enjoyed their full freedom, and that the power of the Eupatridæ was wholly removed, immediately after the legislation of Solon. All institutions, which long usage has confirmed and established in a state, are generally observed, through custom and force of habit, for some time after they have been cancelled by an entire change in the system of the government. And the very division of the people into tribes, which Solon left unaltered, gave the nobles an opportunity of obtaining influence by popular favour and party intrigue, now that they were reduced by the laws to an equality with the rest of the citizens. Hence, about forty years after the death of Solon, Clisthenes, a patrician himself, but professedly on the side of the people, being desirous to depress and degrade the nobility, first abolished the ancient division of tribes, as the most effectual means of reducing the power of the Eupatridæ, and instituted an entirely new system. This is the reason of the change assigned by Aristotle[3], and more correctly than that given by Herodotus[4], who attributes it to the indignation which the Athenians felt in making use of the same names and number of the tribes as those adopted by the Ionian states. Clisthenes, then, first of all divided the whole territory of Attica into one

[3] Polit. vi. cap. 4.

[4] Lib. v. cap. 69.

hundred parts, which he called δῆμοι [5]. These parts he [364] distributed equally among ten tribes, so that each tribe contained ten demi: just as in ancient times three phratriæ were assigned to each of the four tribes, or at Rome, ten curiæ to each of the tribes originally founded by Romulus. Clisthenes named the tribes, by command, it is said, of the oracle at Delphi, from the ancient heroes Cecrops, Erechtheus, Pandion, Ægeus, Hippothoon, Œneus, Acamas, Antiochus, Leon, and Ajax. The demi were called, some by the names of towns or villages situated in them, as Marathon, Lampra, Icaria, Thoricus, Decelea, Œnöe, Eleusis, Rhamnus; and others after the clans who had settled there, as the Dædalidæ, [365] Ionidæ, Semachidæ, Pæonidæ, Philaidæ, Scambonidæ, Cothocidæ, and many more; for it is both tedious and useless to enumerate the names of all, especially as

[5] The name δῆμοι was undoubtedly of greater antiquity than the age of Clisthenes, and was used to designate the various districts of Attica, which were originally so many independent republics. Plutarch uses the term δῆμοι in this sense, vit. Thes. cap. 24. Ἐπιὼν οὖν ἀνέπειθε κατὰ δήμους καὶ κατὰ γένη, κ. τ. λ. There was not, however, at that time any such regular and definite division of δῆμοι as that instituted by Clisthenes. There is indeed extant an Attic law, attributed by some to Solon, (see inf. chap. ii. note 1.), in which, among other corporate bodies, mention is also made of δῆμοι; but I do not, for my own part, believe the law to have been Solon's. The statement of Demetrius Phalereus, (ap. Schol. ad Aristoph. Nub. v. 37.), that the Δήμαρχοι were instituted by Solon, is refuted by the testimony of Aristotle, who (in Ath. Rep. ap. eundem Schol. et ap. Phot. in v. Ναυκραρία) asserts that Clisthenes first appointed them. But before his time the Naucrari are said to have had many duties which were subsequently imposed upon the Demarchs; on which subject see Boeckh, Publ. Econ. i. p. 169. 328. ii. 47. Hence these two offices are sometimes contrasted with each other, as also the Naucrariæ, over which they presided, with the δῆμοι. For the Naucrariæ were likewise divisions of the tribes. Ναυκραρία ἦν τέως (that is, before the time of Clisthenes,) φυλῆς δυοκαιδέκατον μέρος· καὶ δυόδεκα Ναύκραροι ἦσαν, τέσσαρες κατὰ τριττὺν ἑκάστην, Pollux, viii. 108. They were called ναυκραρίαι, because each had to provide a ship for the use of the state. They continued to exist even after Clisthenes, though their number was increased to fifty. Boeckh (ut sup.) has collected all the scattered information about them which can be derived from the ancients. The whole subject, however, is involved in the greatest obscurity, and is even almost out of the reach of conjecture in some points.

they may be learned by any one from the most ordinary books.

But although the division of the people into tribes was thus altered, yet Clisthenes did not choose to dissolve the ancient corporations of the phratriæ and clans, with a view, no doubt, to the preservation of their common sacred rites and religious observances. Besides, as many of the highest and most august offices of the priesthood belonged, by ancient right, to certain clans, and could be lawfully held by no others[6], the interruption and violation of divine worship would necessarily attend the removal of all distinction between the clans. From these motives, therefore, Clisthenes retained both them and the phratriæ, which remained unaltered through every vicissitude till the latest times of the republic. This ancient division, however, was kept entirely distinct from and unconnected with the new distribution of the tribes, so that those who were of the same clans, and consequently the same phratriæ, might yet belong to different tribes and demi[7]. Moreover, while all Attic citizens whatever, whether adopted or genuine, had to be registered in some one tribe or demus, those only were admitted members of the clans and phratriæ who were of genuine Attic origin[8]: which is the reason that the orators so frequently refer to lists of the phratores to prove the εὐγένεια and pure blood of Attic citizens.

[366] The tribes and demi were originally so constituted, that those who dwelt and occupied lands in the same places, were enrolled also in the same tribes and demi. Thus, one who lived at Marathon belonged to the demus of that name; and similarly none could be enrolled in the Acharnian demus, unless he resided at the town of Acharnæ. But this exclusive system soon became gradually changed. For, as it was customary for a son to be registered in the demus of his father, and

[6] See Taylor ad Lycurg. p. 123. Orat. Gr. Tom. viii. Reiske.

[7] See Niebuhr. Hist. Rom. i. p. 229.

[8] Aristoph. Ran. 420. Av. 765. and the commentators. Niebuhr. ut sup.

it must frequently have happened that the former made some other part of Attica his abode, it might often occur, that one who dwelt (for example) at Marathon would be enrolled, not in the demus of Marathon, but in some other, say the Acharnian, to which his family originally belonged[9]. This circumstance, however, would not be likely to cause much inconvenience or confusion, since all the meetings of the tribes and demi were held, and the management of all common affairs conducted, not on the spot, but at Athens.

The number of the demi varied at different periods, and was ultimately nearly doubled. Clisthenes instituted a hundred; but in the time of Strabo there were a hundred and seventy-four. The cause of this increase in their number was in all probability the rapid extension of the population, and consequent foundation of new towns, as well as the addition of two new tribes, the Antigonis and Demetrias, which were afterwards called Ptolemais and Attalis. And what can be more probable, than that the largest of the ancient demi should then be divided into several smaller, [367] and new demi should thence be added to new tribes[1]? Several of the original demi were in fact added to these two new tribes, as, for instance, the Hagnusii, who first belonged to the tribe Acamantis, were afterwards added to the tribe Demetrias, and ultimately to its successor, Attalis. Similarly Agryle was separated from the Erechtheid, Atene from the Antiochid, Themacus from the Erechtheid, Condyle from the Pandionid, and all were assigned to the Ptolemaid[2]. But we will here conclude our remarks on this subject.

[9] Taylor, Lect. Lysiac. p. 252. It is clear that all did not reside in their own demi, from Demosth. adv. Eubulid. p. 1302, and that many had landed property in other demi, appears from a passage of the same orator, in Polycl. p. 1208. Compare Aristot. Econ. ii. 2. 5.

[1] The Berenicidæ, of the tribe Ptolemais, appear to have been a new demus of this description, and perhaps also the Apollonienses, of the tribe Attalis. See Meursius de Pop. Att. his vocibus.

[2] See Meursius ut sup.

CHAPTER II.

On the Assemblies of the Tribes.

All these divisions of the people, though subject to the whole state as the members to the body, are nevertheless to be regarded as distinct and otherwise independent corporations in themselves. For they each had their respective heads or presidents, and enjoyed the right of deliberating and deciding in common upon matters connected with their own interests—privileges which are the main characteristics of incorporate bodies. There is extant an ancient Attic law, attributed by some to Solon, which confers upon these corporations the right of framing any rules, regulations, and engagements for themselves, provided they be not at variance with the laws of the whole state[1].

[368] Such, then, being the case, it was necessary that they should occasionally hold meetings, to consult and determine upon the various affairs peculiarly appertaining to their own communities. And the nature of these meetings we propose to consider in the present chapter: for we must premise that those which they held for the celebration of their common religious observances, were of a totally different kind, and as such unconnected with the subject before us. The phratriæ and clans seldom met but for the sake of performing their sacred rites; while the smaller companies, as those of the merchants,

[1] Gaius, de collegiis, lib. iv. D. It is well known what controversy the explanation of this law excited between the two great philologists and lawyers of their day, Salmasius and Heraldus. See Salmas. de Mod. Usur. cap. 3. Herald. Obs. et Emend. cap. 42. in Everard Otto's Thesaurus, J. R. Tom. ii. p. 1364. Salmas. Obs. ad J. A. et R. cap. 4. Herald. Animadv. lib. ii. cap. 1—3. The question has now been determined, partly by Bynkershoek, in Obs. J. R. lib. i. cap. 16, to whom I must for the present refer the reader. The law has also been discussed by Petit, Leg. Att. p. 524, where compare Wesseling. I have already said that I do not believe it to be Solon's.

sailors, artisans, occasionally indeed did convene assemblies for other objects, although, as these had little to do with the state in general, I shall pass them also without notice at present. There remain, then, the meetings of the tribes and demi, which were held, not only for the joint celebration of sacred rites, but also for consultation upon their common affairs,—affairs too which were sometimes in great measure connected with the whole state. We will therefore proceed to discuss the nature of both these, as far as we have been able to investigate the subject.

In the first place, then, every tribe was allowed to elect its own president and superintendent. In the earliest times, before the division of the tribes was altered by Clisthenes, there were four *Φυλοβασιλεῖς*, nominated from the Eupatridæ[2], who are said to have especially [369] had the management and direction of the sacred rites, and the jurisdiction in certain causes[3]. But the nature of their duties is lost in antiquity, and I am not aware that so much as mention is any where made of the *Φυλοβασιλεῖς* in the Attic writers. Nor can we be surprised at their having been long forgotten; for their appointment had ceased long before the period of written records. Had it not been for the Grammarians, we should have been deprived of even the slight notice of them which we happen now to possess.

The superintendents, *Ἐπιμεληταὶ*, who were likewise created by the tribes, have not met with a much better fate. They are indeed mentioned by Antiphon and Demosthenes, but little information is given by those orators respecting their duties. Thus much, however, is certain; that they also presided at and directed the periodical games and contests of music, gymnastic exercises, and

[2] Pollux, viii. 111. Hesychius in *Φυλοβασιλεῖς*. Photius in *Ναυκραρία*.

[3] Pollux, ut sup. and 120. They presided at trials in the Prytaneum, which however must rather be considered as a kind of ancient religious form than real trials. See the authors cited by Matthiæ, de Judic. Ath. p. 152.

dancing, as well as the scenic representations, which it was customary for the tribes and their Choragi and Gymnasiarchs to exhibit at certain festivals, as the Dionysia, Panathenæa, Thargelia, &c. And first, we may infer from the oration against Midias[4], that it was the duty of these superintendents to see that the Choragi and Gymnasiarchs were duly nominated by their respective tribes; and in the next place it appears probable to me, from the oration of Antiphon *de saltatore*, that they were required to provide a sufficient number of children from their tribes to be instructed by the Choragus in dancing, and brought forward by him on the stage in the public exhibitions of that science[5]. Lastly, they appear to have taken a considerable part in assisting [370] those upon whom the exhibition of the games devolved, by superintending the preparations[6], dispensing the money subscribed for that purpose by the members of their tribes[7], and taking care that the Choragi and Gymnasiarchs should duly and faithfully perform the duties allotted to them. Suidas assigns to them the additional office of keeping the choruses in the theatre in good order, and preventing them from committing any indecent outrage[8]. It is probable,

[4] P. 518. 519. Compare Sigonius de Rep. Ath. iv. cap. 2. p. 606.

[5] Antiphon. de saltat. p. 142. 44. 143. init. ed. Steph. The individual for whom this oration was written, deposes that he, being appointed Choragus of the Erechtheid and Cecropid tribes, and unable from the press of other business to furnish and practise his chorus, deputed that office to two substitutes, Amynias, ὃν αὐτοὶ οἱ φυλέται (οἱ τῆς Ἐρεχθηίδος) ἐψηφίσαντο συλλέγειν (τὸν χορὸν) καὶ ἐπιμελεῖσθαι τῆς φυλῆς ἑκάστοτε, δοκοῦντα χρηστὸν εἶναι, and another, whose name is not specified, from the Cecropid tribe, ὅσπερ ἑκάστοτε εἴωθε ταύτην τὴν φυλὴν συλλέγειν, i. e. τὸν τῆς φυλῆς χόρον, as he had before declared, p. 142. 34.

[6] Hence it is that Midias, ap. Demosth. p. 519. is desirous of being appointed ἐπιμελητής: viz. that he might annoy Demosthenes as much as possible in preparing for the exhibition of the games—which he would have had no opportunity of doing, had not the duty of the ἐπιμεληταὶ been to assist in the preparations.

[7] For the *whole* expenses were not incurred by the Gymnasiarchs or Choragi alone. Demosth. Philipp. i. p. 55.

[8] Suidas in v. ἐπιμεληταί; ἐπιμεληταὶ ἐχειροτονοῦντο τῶν χορῶν, ὡς μὴ ἀτακτεῖν τοὺς χορευτὰς ἐν τοῖς θεάτροις.

as there were a considerable number of superintendents to every tribe, that certain individuals of them had the management of certain games; a supposition which derives some confirmation from a passage in Demosthenes, where Midias is said to have requested the members of his tribe to elect him ἐπιμελητὴν εἰς τὰ Διονύσια, manager of the games for the ensuing Dionysia. He would not have *specified* these games, had the office of ἐπιμελητὴς extended to all.

If you inquire what other duties the superintendents of the tribes had to perform, I am unable to give you any information. Some suppose that they held the meetings of the tribes, and had the care and direction of their common property, and especially of the treasury; [371] nor have I any thing to object to such a supposition, at least respecting the meetings, which must have been held by some president, and I know of no other but the ἐπιμεληταὶ who could have performed that office.

No ancient testimony, however, can be adduced in proof of this; for the passage cited from Antiphon by Sigonius [9], has been shown by Valesius [1] to have no connexion with the matter. Respecting the management of the treasury, Sigonius appeals to the author of the oration against Theocrines. But all that can be collected from that oration is [2], that Theocrines had the management of the common property (τὰ κοινὰ) belonging to the members of his tribe, and was afterwards tried and found guilty of embezzlement. As to his being ἐπιμελητὴς τῆς φυλῆς, this is not stated by the orator, but rests on the sole authority of the unknown Grammarian who compiled the argument, and who is, in my opinion, very little to be depended upon. But even supposing Theocrines *was* ἐπιμελητὴς, he might have had the disposal of these same τὰ κοινὰ without being keeper of the public finances. For the tribes had their own treasurers, ταμίαι, for this very purpose, (as the name imports,) entirely different

[9] De Rep. Ath. ut sup.
[1] Ad Harpocrat. p. 70.
[2] Orat. in Theocrin. p. 1326.

from the ἐπιμεληταὶ, upon whom therefore we cannot reasonably impose that office. Concerning these ταμίαι, however, we know nothing more than the mere name, and even that, as far as I am aware, is only once casually mentioned. But there can be no doubt that they were chosen by the members of their tribes.

There were also many magistrates who were created or chosen by lot *out of*, but not *by* the several tribes. [372] Of this description were the Strategi, Taxiarchs, Phylarchs, Apodectæ, Poletæ[3], and others. Respecting some the question is uncertain, as, for instance, those called the Eleven, who were in reality ten, with a supernumerary in the capacity of secretary[4]. Some modern writers have supposed[5] that these were elected by lot, one by the members of each tribe. For my own part, I am inclined to suppose that the principle of election was this:—That all magistrates or superintendents whose duties were connected solely with the affairs of the tribes, were to be nominated by those tribes; but that in no others this was to be the case. Yet I should have no objection to imagine that in the appointment by lot of even these latter magistrates, the tribes were allowed to furnish candidates from their own body, between whom the chances of the ballot were to decide. Nor must we here omit the remark of Corsini[6], that in all probability the election of the senators was transacted by the superintendents in the assemblies of the tribes.

Those who were elected by the tribes to manage and direct their affairs, were also liable to be summoned to

[3] On the Strategi, Taxiarchs, and Phylarchs, see book ii. chap. 11. On the Apodectæ, Harpocrat. in v. Pollux, viii, 97. Lex. Rhet. Bekker, p. 198. On the Poletæ, Harpocrat. in v. Pollux, viii. 99. Lex. Rhet. p. 291. As to the opinion of Ubbo Emmius, Descript. Reip. Att. p. 75. ed. Elzevir; that each tribe had four Phylarchs even before the time of Clisthenes, and that when the name became subsequently appropriated to the military service, they were called ἐπιμεληταὶ φυλῶν,—this is a mere guess. The ancients themselves make no mention of any but military Phylarchs.

[4] Pollux, viii. 102. Lex. Rhet. p. 250.

[5] Postellus, de Rep. Ath. cap. 10. (in Gronov. Thesaur. tom. v. p. 1332.)

[6] Fast. Att. Diss. vi. n. 4. p. 265.

give an account of their administration by their electors. Thus we read that Theocrines, whether he was ἐπιμελητὴς or ταμίας, was found guilty of embezzlement by the members of his tribe[7]: and that the trial [373] was held at the meeting of the Leontidæ, (to which tribe he belonged,) and not before the tribunal of the Logistæ or Euthuni, who used to take cognizance of the conduct of the state magistrates[8], is evident, as well from the whole context of the oration as from the mention of a decree, which, upon Theocrines making satisfaction, was drawn up to that effect by one Scironides ἐν τοῖς φυλέταις, i. e. in the meeting of the members of his tribe[9].

Moreover, the administration of the common property was reserved for the meetings of the tribes. For they all had their own peculiar lands and independent revenues derived chiefly from thence, over which a treasurer (ταμίας) was appointed[1], as we have already observed. These lands were let out to farm by the tribes; and there is extant an inscription (discovered at Athens in 1729 by Fourmont) containing a decree[2], [374] or rather fragment

[7] Orat. in Theocrin. p. 1326.

[8] See Boeckh, Publ. Econ. i. p. 204—207.

[9] In Theocrin. p. 1327.

[1] I omitted before, in speaking of these ταμίαι, to adduce the passage in which alone, if I am not mistaken, they are mentioned. It is in an inscription, in Boeckh, Publ. Econ. Tab. vii. no. xviii. In the tenth line of this inscription the word ΓΕΙΜΕΝΙΤΑΙΣ is read, for which Boeckh (ii. p. 339.) suggests ΤΕΜΕΝΙΤΑΙΣ. These Τεμενῖται he supposes to have been the managers or overseers of the sacred lands, τεμενῶν. If this were really the case, we must also suppose that certain portions of the landed property belonging to the tribes was consecrated to the gods. But it might be conjectured that the true reading is ΕΠΙΜΕΛΗΤΑΙΣ—a reading more probable than at first sight it appears to be*. For, if we erase the last perpendicular stroke of the letter Π, we have Γ: and supposing Fourmont, from whom the inscription is copied, to have transposed the letters, we have at once ΕΠΙ instead of ΓΕΙ. Again, there is scarcely any difference between ΛΗ and ΝΙ, if the middle stroke of Η is effaced. Moreover, the ἐπιμεληταὶ are again mentioned in the thirteenth line of the same inscription.

[2] This is the very inscription to which I have alluded in the preceding note. The name of the tribe was undoubtedly specified in the thirteenth

[* Π and Γ are almost indentical in Inscriptions—whence the origin of the Roman P.]

of a decree, passed by one of the tribes, (whose name is effaced from the marble,) and stating the terms and conditions on which some of these lands were let.

The superintendents also of the public works, as the τειχοποιοὶ, ταφροποιοὶ, τριηροποιοὶ, were elected by the tribes at the command of the people[3]. The monies to be employed in the repair or erection of such works were allotted to them out of the public treasury[4]; but the treasurers (ταμίαι) who paid them the various instalments as they were required, and assisted in making out the accounts of the expenditure, were nominated by the members of the tribe, not by the people collectively. The subject is well known from the oration of Æschines against Ctesiphon[5]. I suppose, too, every one is aware that the tribes had likewise the appointment of those who exhibited the ordinary games and festivities. Respecting the Gymnasiarchs, Choragi, and those called ἑστιάτορες, we have much direct information from the ancient writers[6]. Beside these, there were certain officers entitled Architheori, and others whose office was called ἀρρηφορία[7]. The former [375] were deputed to conduct the periodical missions to Delos, and to the sacred games known as the Olympian, Pythian, Isthmian, and Nemean. The latter were in some way connected with the sacred processions, and, if we may conjecture from their name, with those virgins called ἀρρηφόροι, who used to take a part in certain of these processions[8]. It was perhaps the duty

line, where we can only decipher the words ΤΟΙΣ ΕΠΙΜΕΛΗΤΑΙΣ ΤΗΣΔΙ . . . . . But as the name of no tribe begins with ΔΙ, I suspect that Fourmont mistook A for Δ, and that the tribe mentioned was ΑΙΓΗΙΔΟΣ or ΑΙΑΝΤΙΔΟΣ.

[3] Æschin. in Ctesiphont. p. 421. 422. 425.

[4] Ἐκ τῆς διοικήσεως. Æschin. p. 426. cf. p. 415.

[5] P. 422. Compare Boeckh, i. p. 183. 217, 218.

[6] Demosth. in Mid. p. 518, 519. In Bœot. de nom. p. 996. where the reader should notice the expression χορηγὸν, γυμνασίαρχον, ἑστιάτορα φέρειν. Cf. Wolf, Proleg. ad Leptin. p. lxxxvii. not. 60. Boeckh, i. p. 481. 499.

[7] See the authors quoted by Wolf, ut sup. p. xc. not. 65. and compare Duck. ad Thucyd. v. 16. Spanheim, ad Callimach. Hym. in Del. v. 314.

[8] Vid. Meurs. Lect. iv. 19. Græc. feriat. in Ἀρρηφορία.

of the above officers to furnish their dresses, and provide them with the materials and implements for weaving the sacred Peplus of Minerva. I do not see any reason to question that these were, as well as the former, created by the members of their tribes, especially as Demosthenes, in speaking of the Choragi, Gymnasiarchs, and *Ἑστιάτορες*, intimates, though he does not expressly designate, some others who were proposed by the tribes for election[9]. We have already stated that it was the duty of the superintendents (*ἐπιμεληταὶ*) to see that these nominations were duly and regularly made by the tribes.

Lastly, crowns were occasionally awarded by the tribes to individuals who had conferred any signal benefits and services upon them[1]: and the laws enjoined that such crowns should be proclaimed in the assemblies of the tribes, and not in the theatre.

CHAPTER III.

On the Assemblies of the Demi.

[376] The Demi, as well as the tribes, of which they were subdivisions, had each their respective magistrates, their own independent property, and their common treasury. They had likewise, in their peculiar meetings, the privilege of deliberating upon their affairs, and passing their decrees, which, as well as those drawn up at the great popular convocations, bore the name of *ψηφίσματα*[1]. The magistrates of the demi were denominated *Δήμαρχοι*, who, among other duties, had the peculiar office of con-

[9] In Bœot. de nom. ut sup. *ἂν χορηγὸν, ἢ γυμνασίαρχον, ἢ ἑστιάτορα, ἢ ἄλλο τι τῶν ἄλλων φέρωσι.*

[1] Æschin. in Ctesiphont. p. 432. 434. There is extant an ancient psephisma of the Pandionid tribe, by which a crown is conferred on one Nicias. (Chandler, Inscrip. Att. P. II. tom. vi. p. 48. cited by Koehler, Dörptische Beiträge, ann. 1814. P. i. p. 28.)

[1] Demosth. adv. Eubulid. p. 1301. 1318.

vening, if necessary, meetings of the members of their boroughs, of proposing the subjects for consultation, and of taking the votes upon the question under consideration[2]. The meetings of the demi were held for many purposes. They had, in the first place, their respective farms, which they used to let out in the same manner as the tribes did theirs; and there can be no doubt but that the members of the demi (as well as those of the tribes, of whom we have already spoken) consulted and decided in their assemblies upon the terms and conditions of the tenure or lease of these lands[3]. We read, too, that collections [377] were sometimes made by the demi; as, for instance, in an Inscription, containing the terms on which certain lands were let by the Piræan demus. Here it is recorded: *ἐπὶ τοῖσδε μισθοῦσιν ἀνεπιτίμητα καὶ ἀτελῆ· ἐὰν δέ τις εἰσφορὰ γίνηται ἀπὸ τῶν χωρίων τοῦ τιμήματος, τοὺς δημότας εἰσφέρειν.* And Julius Pollux, speaking of the Demarchs, says[4]: *τὰς εἰσφορὰς τὰς κατὰ δήμους διεχείριζον*[5] *οὗτοι, καὶ τὰ ἐξ αὐτῶν ἀναλώματα.* Those *εἰσφοραὶ*, however, which are mentioned in the Inscription,

[2] Harpocrat. et Suid. in v. *δήμαρχος*. For a general account of the duties of the Demarchs, the reader is referred to the commentators on Julius Pollux, viii. 108. Schol. ad Aristoph. Nub. v. 37. Sigon. de Rep. Ath. iv. 2. p. 606. Boeckh, i. 169. ii. 47. Petit, Leg. Att. p. 626.

[3] As far as I am aware, there are two inscriptions now extant which bear reference to this subject. One is in Chandler, ii. 109. and contains the terms of letting the theatre in the Piræus. It is also mentioned by Boeckh, i. p. 330. ii. 338. but as I am unable to procure Chandler in my part of the world I must necessarily pass it over in silence. The other inscription has been but lately published by Boeckh, Tab. vii. n. xvii. and relates to the terms of a lease of land on the coast (*παραλία*), salt-works (*ἁλμυρίοις*), and certain consecrated fields, granted by the Piræan demus. The inscription commences: *Ἐπὶ Ἀρχίππου ἄρχοντος, Φρυνίωνος δημάρχου* (i. e. Ol. 114. 4. or 115. 3.)——the last part is mutilated. Although no mention is made, in the portion which remains, of any assembly in the Piræan demus, nor any intimation given that a psephisma was passed in assembly, specifying the terms and conditions of the lease, yet it is sufficiently evident that such must have been held, and the fact is confirmed by the psephisma of which I have spoken in the preceding chapter.

[4] VIII. 108.

[5] That this is the true reading every one, I imagine, will agree with Hemsterhuis, especially since the Falckenburg manuscript has *ἐχείριζον*.

appear to be tributes exacted in the time of war for supplying the deficiencies of the public treasury, of the same kind as those which, as we have seen in the preceding book, were paid by each of the citizens; nor is it to be supposed that the tribes and demi, which possessed their own lands and other independent property, were exempt from this duty. Those subscriptions, however, of which Pollux tells us the Demarchs had the disposal, and from which they provided the requisite expenditure, I conceive to have been made by the demi for the celebration of the sacred rites[6], and perhaps for any other casual emergency, when the common chest happened to be inadequate to meet the expenses incurred. [378] On these subjects I think we are justified in asserting that the Demarchs consulted the members of their demi in assembly, even though the fact is not expressly asserted by any ancient writer. In all other respects the management and disposal of the finances appears to have devolved not upon the Demarchs but upon the *ταμίαι* of the demi, who are mentioned in an ancient Inscription[7].

These magistrates whom I have mentioned, the Demarchs and treasurers, or *ταμίαι*, were in all probability created by suffrage in the assemblies of the members of the demi. This we may surmise from the known fact that the superintendents of the tribes (*ἐπιμεληταὶ*) were elected in the same manner by the tribes to which they respectively belonged, and the Phratriarchs by their own Phratriæ[8]. Moreover, there is not the slightest intimation in any of the ancient writers, that the Demarchs were created, as Heraldus supposes[9], not by vote but by lot.

There were likewise certain offices of the priesthood,

[6] Ἱερὰ δημοτικά, from which the ἱερὰ δημοτελῆ differ: see Harpocrat. in v. Pollux, viii. 107. Lex. Rhet. Bekk. p. 240.

[7] Chandler, ii. 109. (quoted by Boeckh, i. p. 172.)

[8] On the superintendents of the tribes, see chap. 2. of this book: on the Phratriarchs, Demosth. adv. Eubulid. p. 1305. εἵλοντό με φρατρίαρχον.

[9] Animadv. ad I. A. et R. II. 3. §. 6. p. 94. Heraldus quotes Demosth. p. 1306. ἔτι τοίνυν ἀρχὰς ἔλαχε καὶ ἦρξε δοκιμασθείς. But that the Demarchy was one of these ἀρχαὶ is nowhere asserted by Demosthenes.

over which, though they were conferred by lot, the demi had yet so much control and authority, as to nominate from their own body certain individuals of the highest rank and respectability, between whom the chances of the ballot were to decide. Thus, in Demosthenes[1], Euxius states: *ὑπ' αὐτῶν τούτων (τῶν δημοτῶν) προεκρίθην ἐν τοῖς εὐγενεστάτοις κληροῦσθαι τῆς ἱερωσύνης τῷ Ἡρακλεῖ.* The Parasiti also (an order of the priesthood) were, we know, elected from the demi[2]; although we are unable to discover in what manner or form their election was conducted.

[379] But of all the affairs which used to be transacted in these assemblies, there were two of pre-eminent importance. These were, the enrolment of new citizens in the Lexiarchic register, and the examination or revision of the names already inscribed. It was necessary for every citizen of Attica, whether genuine or adopted, to belong to some one demus, and to have his name enrolled in its register. These registers of the members of the demi were called *ληξιαρχικὰ γραμματεῖα*, because, when any individual had been enrolled therein, he was competent to enter upon an inheritance, and become master of his patrimony, as being now *of age*, i. e. admitted among the number of the men. To enter upon an inheritance is in Attic Greek *λαγχάνειν κλῆρον*; a patrimony, *λῆξις*; and to be master of that patrimony, *τῆς λήξεως ἄρχειν*[3]. The registers were kept in the custody of the Demarchs, who added or expunged names as required, though not, of course, without the consent, in either case, of the members of their demi. Thus, if a father wished his son, or a guardian his ward[4], to be

[1] Adv. Eubul. p. 1313. Compare Heraldus, p. 93.

[2] Petit, Leg. Att. p. 159. seq.

[3] Harpocrat. in *ληξιαρχικὸν γραμματεῖον*. Compare Suid. and Hesych. in v. *λῆξις* and *ληξιαρχεῖον*, with the commentators. Pollux, viii. 104.

[4] It was first necessary, however, for a ward to be approved in the previous scrutiny called *δοκιμασία*, of which I have already spoken, book i. chap. 6. What I there observed, that the *δοκιμασία* appeared to have been applicable only to wards and orphans, is confirmed by the authority of the

admitted among the citizens, it was necessary to convene a meeting, if not of all his fellow *δημόται*, of those at least who were in any way connected or acquainted with the youth, and to produce the latter before them. The father or guardian then gave in the name of the son or ward, [380] and declared (on oath, as I am inclined to suppose) that he was born in lawful wedlock[5]. The members assembled likewise gave their votes obliged by an oath. Any one present was at liberty to object to the youth as unfit for enrolment, on the grounds that he was not the son of his alleged father, or a bastard, or for some similar reason. The objection had then to be canvassed and discussed. If the majority of those present gave their suffrage in favour of the enrolment proposed by the father or guardian, the name of the youth was inscribed by the Demarch in the register[6]. From that time forward he was a member of his demus and of the state, and had a share in all the rights of the commonwealth, and all common and public affairs. The same process of enrolment was observed when any citizen changed his demus, in consequence of being adopted, either as a minor or already of age[7].

It frequently however happened, that a demus or prefect of a demus was bribed to admit into the Lexiarchic register many whom, as being of foreign extraction or born in unlawful wedlock, the laws forbade to be enrolled

Lexicon Rhetoricum, in Bekker's Anecdota, i. p. 235. *δοκιμάζονται δὲ καὶ οἱ ἐφ' ἡλικίας ὀρφανοί, εἰ δύνανται τὰ πατρῷα παρὰ τῶν ἐπιτρόπων ἀπολαμβάνειν.* And, in fact, whenever mention is made in the orators of the *δοκιμασία τῶν ἐφήβων*, it always refers to orphans, who receive their patrimony from their guardians. See, for instance, the *ἐπιτροπικοὶ λόγοι* of Demosthenes; Isæus, de Astyphil. Hered. p. 77. 35. with many other places.

[5] That is, of both father and mother who were citizens: for a marriage between a citizen and foreign woman was unlawful, and the children illegitimate, at least after the archonship of Euclides, and even before—although the ancient laws of Solon and Pericles upon this subject soon became obsolete. See Petit, Leg. Att. p. 213. seq., and our remarks in book i. chap. 6.

[6] See especially Demosth. adv. Eubul. p. 1318.

[7] Demosth. in Leochar. p. 1091. Isæus de Apollod. Hered. p. 66. 17.

as citizens. The Potamii, of the Leontid tribe, had a very bad reputation for their facility in admitting such spurious members among them[8]. It was indeed ordained by the ancient legislators, that any one should be permitted to impeach those who had surreptitiously insinuated themselves into the lists of the citizens [381] and usurped rights to which they had no claim; and even, if they had come off with impunity at their trial apparently in consequence of bribery, to summon them before the court a second time. These accusations were called[9] *γραφαὶ ξενίας*, and *δωροξενίας*. But, as even this precaution proved insufficient to deter such men from their fraudulent practices, another method was adopted, which consisted in deputing the trial (*διαψήφισις*) upon spurious citizens to be held by the members themselves of the demi. One Demophilus is said to have been the author of this institution, in the archonship, as it appears, of Archias, Ol. xc. 2[1]. The nature of it was as follows. If it was suspected at any time that any spurious citizens (*παρέγγραπτοι*, as they were called) were enrolled in the Lexiarchic register, the demi were enjoined, by a decree of the people[2], to institute a revision of their respective lists, and expunge the names of such as might be found to have been improperly entered therein. On an appointed day, therefore, the members of every demus separately assembled in the city[3]. Each meeting was

[8] Harpocration in v. Ποταμός.

[9] Harpocrat. and Suid. in δωροξενία. Lex. Rhet. Bekk. p. 240. Pollux, viii. 40.

[1] Schol. ad Æschin. in Timarch. p. 108, and Taylor in loc. The authority of the Scholiast would have had little weight, had it not been confirmed by Æschines himself, who says: *ἐπειδὴ δ' ἐμνήσθην τῶν διαψηφίσεων* (for thus these trials of the *δημόται* were called) *καὶ τῶν τοῦ Δημοφίλου πολιτευμάτων*. On the period of their institution, see Harpocrat. in v. *διαψήφισις*: *ἐντελέσταται δὲ διείλεκται περὶ τῶν διαψηφίσεων, ὡς γεγόνασιν ἐπὶ Ἀρχίου ἄρχοντος, Ἀνδροτίων ἐν τῇ Ἀτθίδι, καὶ Φιλόχορος ἐν ἕκτῳ τῆς Ἀτθίδος.* Vid. Anonym. (i. e. Scaliger) in *Ὀλυμπιάδων ἀναγραφῇ*, Meurs. Lectt. Att. iii. 10. and Taylor ad Æschin. ut sup.

[2] Demosth. adv. Eubulid. p. 1303.

[3] Demosth. adv. Eubulid. p. 1302.

superintended and held by its Demarch[4], in conjunction, perhaps, with some senator of the same demus. At all events we find Eubulides, a senator, recorded in Demosthenes[5] [382] as having managed all the business of the *διαψηφίσεις* in his own demus. It certainly is possible that the same individual might have been a Senator and Demarch too; and Valesius[6] is of opinion that Eubulides *was* a Demarch. But Demosthenes nowhere gives the slightest intimation that such was the case, but speaks, in my own opinion, in such a manner as to imply nothing more than that Eubulides held the meeting because he was senator; or at least that he attended to administer the oath, and take charge of the Lexiarchic register[7]. Moreover, in some other transactions we find that senators actually were combined[8] with Demarchs; which circumstance adds considerable probability to the supposition that they were so in this case also.

The first thing to be done when the members of the different demi were assembled, was to tender them an oath, whereby they engaged to give their suffrages impartially and according to their sincere opinion, without favour towards, or enmity against, the individual upon whom they might be required to pass judgment[9]. The registers were then opened, and the names they contained publicly read. The opinion of the members was asked upon each individual, whether they believed him to be a true and legitimate or a spurious citizen. [383] Upon this any one

[4] For Harpocration informs us that his office was, *συνάγειν τοὺς δήμους, ὅποτε δεήσειεν, καὶ ψῆφον αὐτοῖς διδόναι.*

[5] Adv. Eubulid. p. 1301.

[6] Ad Harpocrat. p. 40. Compare Petit, Leg. Att. p. 210.

[7] The words of Demosthenes in the above passage are these: *καὶ βουλεύων (ὁ Εὐβουλίδης), ὦ ἄνδρες δικασταί, καὶ κύριος ὢν τοῦ θ' ὅρκου καὶ τῶν γραμματείων, ἐξ ὧν ἀνεκάλει τοὺς δημότας, τί ποιεῖ; κ. τ. λ.*

[8] Demosth. in Polycl. p. 1208. *ἐψηφίσασθε τοὺς βουλευτὰς καὶ τοὺς δημάρχους καταλόγους ποιεῖσθαι τῶν δημοτῶν, καὶ ἀποφέρειν ναύτας.*

[9] This part of the oath (which Euxitheus, for whom the oration against Eubulides is written, asserts to have been expunged by the latter individual) we learn from Demosthenes, p. 1318. The rest of the oath, which Eubulides had allowed to remain, is lost to us. See p. 1307. 1301.

was at liberty to rise and express his suspicion or conviction that he was not a genuine citizen. The impeachment was followed by a defence, with proofs and evidence on both sides[1]. And lastly, the votes of the assembly were taken upon the question; or, if there was not sufficient time, the transaction was postponed till the following day[2]. The Grammarians state that the ballots made use of in this *διαψήφισις*, were not pebbles but leaves[3]. Those whose names were struck off the list were said *ἀποψηφισθῆναι*[4]; and the only punishment which was imposed upon them, if they acquiesced in the sentence which had been passed, was the deprivation of their rights in the state, and degradation to the rank of aliens. But if any considered that their names had been undeservedly expunged from the register, they might appeal to another court, with the risk, however, upon a second condemnation, of being made slaves and sold[5].

[384] But there was another occasion on which these inquisitions (*διαψηφίσεις*) were instituted. If ever the Lexiarchic register of the demus was lost or destroyed, care was taken, in composing a new one, that the names of none should be recorded but those whose claims to the rights of the state were allowed and sanctioned by the suffrages of the remaining members of their demi. Mention is made of this description also of *διαψηφίσεις* by

[1] Demosth. adv. Eubulid. p. 1302. Compare Æschin. de Fals. Leg. p. 345.

[2] Demosth. p. 1302. 1303.

[3] Pollux, viii. 18. who cites no authority. Demosthenes, in the oration against Eubulides, uses the term *ψῆφοι*.

[4] *Ὠνομάζετο δὲ ταὐτὸν τοῦτο ἀποψηφίσασθαι, καὶ ἀπεψηφισμένον ὑπεναντίως τῷ παρὰ τοῖς δικασταῖς. ἐκεῖ γὰρ τὸ ἀποψηφίσασθαι τὸ ἀφεῖναί ἐστιν· ἐν δὲ τοῖς κατὰ δήμους δικαστηρίοις ἀντὶ τοῦ καταψηφίσασθαι τάττεται.* Pollux, viii. 19. To adduce examples were superfluous. See Taylor, præf. ad Dem. or. Eubul. p. 962.

[5] See the author of the argument to the oration against Eubulides—supposed by Taylor to have been Didymus—p. 1298. On the appeal (*ἔφεσις*) in these causes, see Dionys. Halicarn. de Isæo, p. 109. extr. ed. Sylburg. where a considerable portion of an oration of Isæus is quoted, bearing a close resemblance to the subject of that against Eubulides, the only one of its kind

Demosthenes in his oration against Eubulides[6]—which is indeed the chief source of our information upon this subject.

Lastly, crowns and other honorary distinctions could be awarded by the demi in the same manner as by the tribes[7]. These too were forbidden by the laws to be proclaimed elsewhere than in the actual assemblies of the demi: though the prohibition was not always religiously attended to. A psephisma of the Piræan demus is extant, in which a crown of olive is conferred upon one Callidamas, and ordered to be proclaimed in the theatre[8].

now extant. On the whole of this διαψήφισις of the demi, see Petit, Leg. Att. p. 209. seq. The passage, however, adduced by him from Hesychius in v. κναμοτρώξ, ἐν ταῖς διαψηφίσεσι κνάμοις ἐχρῶντο, has nothing to do with the business.

[6] Pag. 1306.

[7] Demosth. adv. Eubulid. p. 1318. extr. 1319. Compare de Coron. p. 267. Æschin. in Ctesiph. p. 434. Boeckh, i. p. 331.

[8] Chandler's Inscriptions, P. II. tom. cviii. p. 72. quoted by Koehler. p. 26.

INDEX.

A.

Actæus, king, 329.
Ἄδεια, 316.
Ἄδικοι and ἄλογοι ἡμέραι, 46.
Ἀείσιτοι, 318.
Æschines, 118. 211. 223. 249. 280. 282.
Æschylus, 288. 286. 330.
Aglauros, two temples of, 314.
Ἀγορὰ, 25.
——— ἀρχαία, 47.
Ἀγοραὶ, *market duties*, 273.
Ἀγοράζειν, ἀγορᾶσθαι, for δημηγορεῖν, 25.
Ἄγραφα ἀδικήματα, 179.
Ἀγὼν τιμητὸς, 163.
Ἀγῶνες ἐπιτάφιοι, 291.
Agoratus, case of, 212.
Ἀγροιῶται, ἀγροῖκοι, 4.
Agyrrhius, 17. 59.
Αἰγικορεῖς, 331.
Αἰκία, private action of, 170.
Αἱρετοὶ, κληρωτοὶ, χειροτονητοὶ, ἀρχαὶ, 294.
Ἀκτὴ, 324.
Alcibiades, case of, 185. 214.
——— age of, 110.
Alcmæonidæ, 8.
Ambassadors, trial of, 190.
——— appointment of, 269.
——— from foreign states, 270.
Ἀναβαίνειν εἰς τὸ πλῆθος, 111.
Ἀνάκρισις, 175, 296.
Ἀναψηφίζειν, 130.
Ἄναρχοι ἡμέραι, 306.
Anaxagoras accused, 286.
Andocides, 148.
Ἀνδρολήψιον, 176. 271.
Anticosmetæ, 304.
Ἀντιδόσεις, 298.
Ἀντιγονὶς tribe, 34. 345.
Ἀντιγραφεὺς, 274. 302.
Antiphon, trial of, 186. 197.
Ἀντιτίμησις, 195.
Ἀπαγωγὴ, 176.
Ἀφῆλιξ, 72.
Ἀποχειροτονεῖν, 126. 230.
Apodectæ, 350.
Ἀποδοκιμασθῆναι, 312.
Ἀπογραφὴ, 215.
Ἀπογράψασθαι, *to petition*, 120.
Ἀπόφασις, 217.
Ἀποφράδες ἡμέραι, 46.
Ἀποψηφίζεσθαι, 126, 360.
Ἀπροστάσιον, 183.
Ἀρχαὶ, 292.
Ἀρχαιρεσιάζειν, 310.
Ἀρχαιρεσίαι, 305.
Ἀρχεῖον, 131.
Ἀρχὴ, any public office, 65.
——— ἀόριστος, 66.
Ἀρχίδια, 282.
Architheori, 352.
Archons, changes in office of, 6.
——— general duties of, 14.
——— Eponymi, many in one year, 143.
——— names of, attached to decrees, 135-7.
——— presided at elections of magistrates, 309.
——— power of, diminished by Solon, 12.
——— qualification of fortune, 296.
Areopagus, trials held by, 168. 217.
——— took cognizance of religious questions, 286.
Ἀργαδεῖς, 331.
Aristophanes, 117. 160. 204. 240. 273. 275. 276. 277. 285.
Ἀρρηφορία, ἀρρηφόροι, 352.
Aristocracy, distinguished by Homer from Plebeians, 3.
Ἀσέβεια, 186. 286.
Assemblies, instituted by Solon, 10.
——— ceremonies preparatory to, 97.
——— confused with the courts, 63. and reason of confusion, 64.
——— dismissal of, 146.
——— days of holding, 30.
——— no fixed days of holding, 39.

Assemblies, hour of holding, 147.
——————— pay for attendance at, 59.
——————— places of holding, 47.
——————— by whom convened, 53.
——————— ordinary and extraordinary, 25.
——————— prayer of the crier before, 99.
——————— signal for holding, 152.
——————— subjects discussed at, 153. 167. 239. 268.
——————— ticket or *σύμβολον*, 62.
——————— usual attendance at, 128.
Ἄστος for *πολίτης*, 5.
Ἀστρατεία, 183.
Ἄστυ, 5.
Ἀτέλεια, 317.
Ἀτιμία, various kinds of, 67.
Ἄτιμοι, excluded from assemblies, &c. 115.
——— method of restoring, 263.
——— *κατὰ προστάξεις*, 68. 115.
Ἄτιμος for *ἀτιμώρητος*, 67.
Attalis tribe, 34. 345.
Attes (Deus) 285.
Attica, natural division of, 324.
Autochthones, sons of Vulcan and Earth, 330.

B.

Ballot, 127, 129.
Βασιλέως, Βασιλικοὶ *νόμοι*, 289.
Βῆμα of the Pnyx, 50.
Bendis (Dea) 285.
Βουλῆς *γνώμη*, 106.
Βούλευσις, *conspiracy*, 183.
Βοῶναι, 301.

C. X.

Callistratus, 59.
Cannoni psephisma, 202.
Chairman, *ἐπιστάτης*, 15.
Χαριστήρια, 288.
Χειροτονεῖν and *ψηφίζεσθαι*, 125.
Choragi, 348. 352.
Χρηματίζειν, 81.
Citizens, definition of, 66.
——— enrolment of, 356.
Classes and ordines, distinction of, 4.
Classes of Solon, 9.
Clisthenes, 14. 237. 342.
Codridæ, identical with Medontidæ, 7.
Coinage, 276.
Colacretæ, 282.
Corn, importation of, 187.
Corythalia (Dea), 285.
Cosmetæ, 304.
Courts, pay of, 17.
Crimes, public, nature of, 169.
Crowns, conferred by the people, 317.
——————— by the tribes, 353.
——————— by the Demi, 361.
——— of the orators, 117.
Ctesicles, case of, 229.
Cylon, sedition of, 8.

D. Δ.

Day, omitted in computing months, 32.
Debtors, petition in favour of, 275.
Δειλία, 183.
Deities, introduction of new, 285.
Δεκασμὸς, 311.
Δημαγωγοὶ, 22. 113.
Δήμαρχοι, 353.
Δημηγορεῖν, 22.
Δημήγοροι, 113.
Demetrias tribe, 34. 345.
Δημιόπρατα, 274.
Δημιουργοὶ, 4. 340.
Δῆμοι, 343.
——— number of, 345.
——— assemblies of, 353.
Δημοποιητοὶ, 66. 230.
Δῆμος, ὁ, for *ἐκκλησία*, 26. 62.
Demosthenes, age when enrolled, 70.
——————— translated, 193. 242.
——————— condemnation of, 219.
Diacrii, 8, 325.
Διαγραφεῖς, 300.
Διαψηφίσεις, 359.
Δικαστικὸν, 17.
Diobelia, 281.
Διοσημίαι, 147.
Δοκιμασία, 114. 176. 232. 312.
Doors, tax upon, 276.
Δωροξενίας *γραφὴ*, 358.
Draco's laws, 7.

E.

Εἰκὼν, 318.
Εἰσαγγελία, 167.
——————— examples of, 185.
——————— different from *μήνυσις*, 204. 215.
——————— process of trial by, 200.
——————— number of judges who tried, 207.
Εἰσαγωγεῖς, 208.
Εἰσιτήρια, 291.
Εἰσφορὰ, 277.

Εἰσφορὰ, of the demi, 354.
Ἑκατοσταὶ, 273.
Ἐκκλησία, definition of, 25.
———— *κυρία* or *νόμιμος*, 26.
———— *κυρία*, 27.
———— *σύγκλητος* falsely explained, 37.
Ἐκκλησίαν ποιεῖν, προγράφειν, προτιθέναι, 53.
Ἐκκλησίας πυνθάνεσθαι, 47.
Ἐκκλησιαστικὸν, author of, 17.
———— confused with *δικαστικὸν* and *ἡλιαστικὸν*, 62.
Ἐκκλησιάζειν, 25.
Ἐκλογεῖς, 277.
Ἐκφυλλοφορία, 223.
Ἕκτημόριοι, 341.
Eleven, the, (*οἱ ἕνδεκα*) 350.
Ἔνδειξις, 116. 123. 172.
———— different from *ἐπαγγελία*, 116. 232.
Enrolment into the demi, 356.
Ἑορταὶ *πάτριοι* and *ἐπίθετοι*, 287.
Ἐπάγειν ψῆφον, 124.
Ἐπαγγελία, 232.
Ἐπέρεσθαι *γνώμην*, 124.
Ἐφέσεις, *appeals*, 230. 360.
Ἐφήγησις, 176.
Ἔφηβοι, 71.
———— *δοκιμασία* of, 71.
———— enrolment of, 69. 356.
Ephori, five, 19.
Ἐπιχειροτονεῖν, *ἐπιχειροτονία*, 123.
———— *ἀρχῶν*, 155. 223.
———— *νόμων*, 242. 248.
Ἐπιδόσεις, 278.
Ἐπιγαμία, 319.
Ἐπιγράμματα, 318.
Ἐπιγραφεῖς, 300.
Ἐπιγράφειν *νομοθέτας*, 249.
Ἐπιμελείαι, 292.
Ἐπιμεληταὶ, 301. 304. 347.
Ἐπινίκια, 288.
Ἐπιψηφίζειν, 82. 123.
Ἐπιστάτης, 15.
Ἐπίτιμοι, 67.
Ἐπόμνυσθαι, 160.
Ἐπωβελία, 175.
Ἐργαδεῖς, 335.
Ἑστιάτορες, 352.
Ἑταιρήσεως γραφὴ, 234.
Ἔθνη (*φρατρίαι*,) 340.
Εὐαγγέλια, 288.
Εὐχαὶ, ibid.
Euergus, 191. 193.
Εὐπατρίδαι, 4, 340.
Εὐθύνη, 176. 190.
Evandrus, 308.
Ἐξεκκλησιάζειν, 52.
Ἐξέτασταὶ *τῶν ξένων*, 305.
Ἐξόμνυσθαι *ἀρχὴν*, 312.

F. Φ.—vide P.

Fasti, Greek, alterations in, 38.
Festivals, great number of, 45.
———— suspension of hostilities during, 229.
———— of Jupiter Soter, 290.
Fines, 275.
Four hundred, appointment of the, 19.
Funerals, public, 291.

G. Γ.

Γελέοντες, 331. 337.
Generals, trial of the ten, 158. 201.
Γένη, 340.
Genetyllis, 285.
Γέρρα, 58. 320.
Γεωμόροι, 4, 340.
Γεωργοὶ, 4.
Γνώμη *βουλῆς, δήμου, στρατηγῶν*, 105.
Γνώμην *ἐπέρεσθαι, ἐρωτᾶν*, 124.
Γνώμας *προτιθέναι, καθιέναι*, 109.
Government, component parts of, 1.
———— popular, different forms of, 1.
———— original form of at Athens, 2.
Γραμματεῖς, 303.
Γραφαὶ, public actions, 175.
Γραφὴ, 175.
———— *παρανόμων*, 122. 157. 260.
———— method of instituting, 161.
———— time of liability to, *προθεσμία*, 265.
———— *ὕβρεως, αἰκίας*, 170.
———— *παραπρεσβείας*, 190.
———— *ξενίας* and *δωροξενίας*, 358.
———— and *εἰσαγγελία* against the same crimes, 181.
Gymnasiarchs, 352.

H.

Harpalus, briberies of, 217.
Hellenes, 338.
Heroes, Homeric, 3.
Hierocles, case of, 215.
Hieromnemones, 270.
Hyes (Deus,) 285.
Hyposophronistæ, 304.

I.

Ἰδιῶται, 114.
Ἱερὰ *ἀπαγγέλλειν*, 291.
Ἱερὰ *καὶ ὅσια*, 283.
Ἱερομηνία, 45. 228.

Ἱκετηρίαι, 315.
Inheritances, read in assembly, 274.
Inscriptions, 41. 64. 89. 136. 281. 351. 354.
Ion and the Iones in Attica, 331.
Iphicrates, decree of, 276.
Ἱππεῖς, 9.
Isæus emended, 279.
Ἰσηγορία, 108.
Ἰσοτελεῖς, 73.
Ἰσοτέλεια, 319.

K.

Κακηγορία, 170.
Καταχειροτονεῖν, καταψηφίζεσθαι, 126. 230.
Κατακαλεῖν, 26.
Κατακλησία, 26. 55.
Κατάλογοι, 299.
Κατάλυσις πολιτείας, 185.
Κατήγοροι, 205.
Κεραμικὴ μάστιγξ, 236.
Κλῆσις, 159.
Κλητῆρες, 175.

L. Λ.

Laws, different from decrees, 239.
—— on enacting and abrogating, 239.
—— language of modernized, 255.
—— time for altering, 267.
—— revised by the Thesmothetæ, 248.
Λειποτάξιον, 183.
Leocrates, trial of, 187.
Leptines, cause of, 267.
Lexiarchs, 57. 74.
Ληξιαρχικὸν γραμματεῖον, meaning of, 356.
—— enrolment in, ibid.
Λίμενες, *harbour duties*, 273.
Logistæ, 279.
Lycurgus, 301.
Lysias, 192. 213.

M.

Magistrates, accused by the people only, 222.
—— definition of, 293.
—— who presided at election of, 309.
—— ways of electing, 294.
Marriage, unlawful, 182.
Menander, case of, 229.
Mesogæa, 326.
Metroum, 131. 303.
Military affairs determined in assembly, 269.
Miltiades accused, 189.
Μισθοὶ, μισθώματα, 273.
Mityleneans, decision upon, 130. 272.
Mœrocles, decree of, 276.
Monarchy, different kinds of, 2.
Months, *full* or *hollow*, 32.
Mysteries, profanation of, 214.

N.

Naucrari, 12. 343.
—— Prytanes of, 12.
Νεώρια and νεώσοικοι, 301.
Νομοθετεῖν, meanings of, 254.
Nomophylaces, 122. 156.
Νόμος and ψήφισμα, 239.
—— εἰσαγγελτικός, 193.
Νομοθέται, 241.
—— appointment of, 246.
—— extraordinary, 258.

O.

Οἰκόσιτοι, 61.
Ὅπλητες, 331.
Orators, 108.
—— age of, 110.
—— crowns of, 117.
Ὅσιος, meanings of, 283.
Ostracism, 234.
Ὄστρακα, 236.

P. Φ. Ψ.

Pandia, 51.
Παρακελεύεσθαι, 119.
Παραλία, 325.
Παράλιοι, 8.
Παραγγέλλειν, 310.
Παραπρεσβεία, 190.
Parasiti, 289. 356.
Παρέγγραπτοι, 358.
Παριέναι ἐπὶ τὸ βῆμα, 111.
Παρνύτης, 60.
Πατρῷος Ζεὺς, 331.
Πάροδον ποιεῖσθαι, 111.
Pediæi, 8.
Πεδίον, 324.
Πεντακοσιομέδιμνοι, 9.
Πεντηκοστὴ, 273.
People, antient division of, 4. 323.
—— classed by Solon, 9.
Pericles, public works of, 302.
Περίδειπνον, 292.
Περίπολια, 313.
Περίπολοι, *rangers*, 314.

Περίπολοι, oath of, ibid.
Περίστια, περιστίαρχος, 97.
Petalism, 238.
Φάσις, 65. 174. 187.
Pheræa, 285.
Φέρειν, *to propose*, 352.
Phidias, anecdote of, 281.
Philo, 280.
Philocrates, accusation of, 190.
Phocion, condemnation of, 219.
Phormisius, law of, 21.
Φρατρίαι, 340.
Phrynichus, murder of, 218.
Φυλακτήρια, 313.
Φυλοβασιλεῖς, 347.
Phylarchs, 299.
——— acting for senators, 11.
Πίνακες ἐκκλησιαστικοί, 72.
Πινάκια, 311.
Pisistratus, 13.
Pittalacus, petition of, 316.
Pnyx, description of, 49.
——— meaning of, ib.
Poletæ, 350.
Prayer in the senate, 291.
Privilegia, 261. 263.
Προβάλλεσθαι, 221.
——— *to propose a candidate*, ibid.
Προβολή, 220. 289.
Προβουλεύειν, 101.
Προβουλεύματα, ibid.
——— two kinds of, 102.
Προχειροτονία, 104.
Προδοσία, 181.
Προεδρεύουσα φυλή, 94.
Προεδρία, 51. 270. 318.
Πρόεδροι, 15. 75.
——— of different tribes, 15. 76.
——— office of, 93.
Proedri of same tribe, office of, 81, 96.
——— seat in assembly, 96.
Proedrus for Ἐπιστάτης, 87. 123.
Προγράφειν ἐκκλησίαν, 53.
Programma, 54.
Πρόοδον ποιεῖσθαι, 111.
Πρόπεμπτα, 53.
Προσιέναι τῷ δήμῳ, 111.
Πρόσκλησις, 162. 174.
Πρόσοδον ποιεῖσθαι, 111.
——— γράψασθαι, 120.
Προτιθέναι ἐκκλησίαν, 109.
——— γνώμας, λόγον, 82, 108.
Protagoras accused, 286.
Προξενία, 319.
Πρυτανεῖα, 274.
Prytanes, 15.
——— duty of, 93.
——— seat in Assembly, 96.
Prytany, 15.
——— length of, 31.
Prytany, corresponding to the months, 40.
——— tables of, 44.
Ψηφίζεσθαι different from χειροτονεῖν, 125.
Ψήφισμα, meaning of, 131.
——— process of carrying, 121.
——— various forms of, 132.
——— ἀπροβούλευτον, 90. 104.
——— ἐπέτειον, 155.
——— different from νόμος, 239.
Ψευδεγγραφή, 183.
Public crimes, nature of, 169.
Pylagoræ, 270, 305.
Pythocles, decree of, 276.

R. P.

Religion, 283.
Ῥήτορες, 108.
——— distinguished from ἰδιῶται, 113.
——— συνήγοροι, ib.
Revenues of Attica, 273.

S. Σ.

Sabazius (Bacchus) 285.
Sacred rites performed by the Prytanes, and announced to the people, 291.
Σχοινίον μεμιλτωμένον, 58.
Scribes, 302.
——— names of added to decrees, 135.
Σημεῖον, signal of holding assemblies and courts, 152.
——— καθελεῖν, 149.
Senate, constitution of, 10.
——— object of, 101.
——— divisions and subdivisions of, 15.
——— of Solon, 11.
——— of Clisthenes, 14.
Σίτησις ἐν Πρυτανείῳ, 270. 318.
Σιτῶναι, 301.
Σκεύη, ship's furniture, 191.
Σκύθαι (τοξόται,) 58.
Σῶμα, *standing in the state*, 69.
Σωφρονισταί, 304.
Solon's legislation, 9.
——— laws remodelled, 255.
Σπονδαὶ μυστηριωτίδες, 229.
Σπουδαρχαί, σπουδαρχίδης, 309.
Σπουδαρχίαν, 310.
State, rights of conferred on strangers, 66. 319.
Strategi, 297.
Συγγράφεσθαι ἐν τῷ δήμῳ, 121.

Σῦλα, σῦλαι, 271.
Συλλογεῖς, 300.
Σύμβολα, 271.
Σύμβολον, 62.
Σύνδικοι, 300. (vid. *συνήγοροι.*)
Συνήγοροι, *advocates*, 112. 204. 245. 304.
Συνηγορικὸν, 112.
Suppliants, 315.
Sycophancy, 181.
Symmoriæ, 277.

T.

Ταμίαι, 299.
——— *φυλῶν*, 349.
Ταφροποιοὶ, 352.
Taxiarchs, 299.
Τειχοποιοὶ, 352.
Τέλη, 273.
Τέλειοι θεοὶ, 109.
Τελέοντες, 331.
Themistius, case of, 230.
Theocrines, 224.
Theomnestus, 192.
Theophemus, 191.
Theorica, 300.
Thesmophoria, 36.
Thesmothetæ, revision of the laws by, 248.
Θῆτες, 9.
Timagoras accused, 190.
Timarcus accused by Pamphilus, 223.
———————— by Æschines, 232.
Tisamenus, decree of, 259.
Treason, *προδοσία*, 181.
Trials, public, 210.
——— nature of extraordinary, 177.
Triballus, 285.
Tribes, 323.
——— names of the original, 331.
Tribes, number of increased, 14. 34. 345.
——— names given by Clisthenes, 14. 342.
———————— by Cecrops and Cranaus, 326.
———————— by Erichthonius, 330.
———————— by Theseus, 340.
——— assemblies of, 346.
——— presidents (*ἐπιμεληταὶ*) of, 347.
Tribute of allies, 272, 273.
Τριηροποιοὶ, 352.
Τριττύες, 340.
Tyrants, the thirty, 20.

Υ.

Ὕβρεως γραφὴ, 170.
Ὑπηρεσίαι, 292.
Ὑπογραμματεὺς, 303.
Ὑπόμνυσθαι, 122. 157.
Ὑπωμοσία, 157.
Voting, 120.

X. Ξ.

Ξενίας εἰσαγγελία, 182.
——— γραφὴ, 358.
——— ἐπαγγελία, 233.
Xenophon, 201. 289.

Z.

Ζητηταὶ, 214. 300.
Ζευγῖται, 9.
Ζεὺς πατρῷος, 331.

THE END.

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